

# DEADLY CONSEQUENCES OF ILLEGAL ALIEN SMUGGLING

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## HEARING BEFORE THE SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY, AND CLAIMS OF THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES ONE HUNDRED EIGHTH CONGRESS FIRST SESSION

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JUNE 24, 2003

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## DEADLY CONSEQUENCES OF ILLEGAL ALIEN SMUGGLING

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TUESDAY, JUNE 24, 2003

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON IMMIGRATION,  
BORDER SECURITY, AND CLAIMS,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The Subcommittee met, pursuant to call, at 10:10 p.m., in Room 2141, Rayburn House Office Building, Hon. John Hostettler (Chair of the Subcommittee) presiding.

Mr. HOSTETTLER. The Subcommittee will come to order.

The recent tragic discovery of 17 dead illegal aliens in an abandoned truck trailer filled with more than 70 illegal aliens in Victoria, TX, has turned the spotlight onto alien smuggling once again.

This tragedy was compounded when two more of these immigrants succumbed to their injuries. Unfortunately, border deaths of aliens trying to enter the United States illegally is not a new phenomenon; rather, the manner of death seems to have changed over the decades.

Years ago, border deaths primarily occurred by the aliens drowning or being hit by traffic while running across Interstate 5 near San Diego, for example. This latter phenomenon was the cause for caution highway signs, like the one we see here in the hearing room, to be posted along Interstate 5 to prevent more aliens fleeing from the Border Patrol from being hit by traffic.

In 1994, the Border Patrol began implementing a new border strategy, the best known examples of which are Operation Gatekeeper in the San Diego Sector and Operation Hold the Line in El Paso, TX. The new strategy focused on deterrence on the border to prevent illegal aliens from penetrating the border. This approach differs from the border patrol's previous operational strategy that mixed deterrence with traffic checks, farm and ranch checks and jail checks.

The new strategy curtailed such Border Patrol interior enforcement activities significantly in favor of a greater emphasis on a show of force at the border to prevent illegal immigration. With these operations in place, ports of entry in nearby areas are more adequately monitored by agents, cameras and motion sensors.

Citizens in the San Diego and El Paso areas are pleased with the operations because they have caused a decrease in crime, and closed down the alien smuggling corridors in their communities. According to several witnesses at a March 10, 1995 border security hearing held by this Subcommittee, Operation Hold the Line is hu-

man enforcement of our immigration laws, and has lessened the number of accusations of civil rights violations by Federal officials, including the Border Patrol.

In addition, the Border Patrol has launched public service advertising campaigns in Mexico, warning of the dangers of remote crossings and devoted resources to search and rescue training and operations. Illegal aliens still determined to enter the U.S. Unlawfully cross the southern border at more remote areas, particularly in Arizona desert land away from the ports of entry.

In doing so, they disregard signs warning of the heat, lack of water, desolation, great distances and dangerous animals. Not unexpectedly, some die from these conditions.

Human rights advocates point to recent alien deaths along the border and argue that the significant number of deaths is caused by border control policies along the southern border.

I totally reject this notion. We should not blame those who enforce our laws for the deadly actions of smugglers. Those of the Border Patrol who, time and again, have saved illegal aliens from dehydration, exposure and violence are not to be blamed for the difficult job they carry out with professionalism and compassion.

We in Congress have to ask why would people place themselves in such jeopardy to get into this country? It seems clear that aliens who subject themselves to smuggling believe the benefits of jobs and eventual green cards outweigh the risks of being caught and deported.

In 1986, Congress passed the Immigration Reform and Control Act, which created two significant provisions, employer sanctions to end the migration magnet of jobs and legalization, an amnesty for illegal aliens who had resided in the U.S. For a number of years.

The goal of IRCA was to end illegal immigration with these two provisions. Clearly IRCA has not worked. The job magnet continues because employer sanctions are not enforced and employers fear civil rights actions if they request too much proof of identity and work authorization.

In addition, after the one-time amnesty of IRCA, we now have between 8 and 11 million illegal aliens here, and people are again talking about another amnesty. Amnesty rumors encourage aliens to get into the U.S. By any means, because once here, they know it is unlikely that they will be deported and believe they will eventually be awarded with a green card.

Hence, the dangerous smuggling and border deaths. It can be argued that advocating for amnesty for illegal aliens encourages smuggling and causes border deaths.

I haven't even touched upon the relationship between smuggling and terrorism yet. Available information indicates terrorist organizations often use smuggling rings to move around the globe. We are compelled to prevent alien smuggling and severely punish alien smugglers, not only to save immigrants lives, but to prevent terrorists from entering this country with the intent to kill large numbers of people.

By accepting illegal immigration and by not enforcing our immigration laws, illegal aliens are encouraged to get to the U.S. By whatever means possible, even if it means risking their life or the lives of their children.

It is imperative that we enforce our immigration laws so that aliens are not tempted to risk their lives to get here. At this time, I turn to the Ranking Member of the Subcommittee, Ms. Jackson Lee for any opening remarks she would like to make.

MS. JACKSON LEE. Thank you very much, Mr. Chairman. And thank you for assenting to my interests, along with your interests, to hold, I believe, this very, very important hearing.

Let me, first of all, say that we appreciate the hard work of all of those who are involved with the safety of this Nation. We particularly respect and acknowledge that there are many participants in that process.

Having had the opportunity to visit the southern border and to see the combination of law enforcement agencies that work so hard every day, to see in many instances the compassion that is shown for individuals who are coming to this Nation for opportunity, I know that this is not a left-hand, right-hand analysis. There is a lot in the middle.

Let me also acknowledge, coming from Texas, the many humanitarian agencies—churches, parishes, and advocacy groups—who work every day to save lives as well, of those individuals who come simply to this Nation to seek an opportunity or a better life for their families.

Also, I do want to make mention, Mr. Chairman, and we always work in this Committee, in this session, on issues that we can agree on. But, we know that philosophically there are many differences in our perspective. I am sorry that we did not follow through on the dialogue and conversations that President Vicente Fox and Mr. Bush had pre 9/11.

Those discussions would not in any way, I believe, jeopardize the security of this Nation. And that is, to be able to actualize peoples' hopes and aspirations as relates to those already in this country in accessing legalization. We come today to look upon the deadly consequences of illegal alien smuggling.

Coming from the region that I come from, I can assure you that after the tragedy that occurred in May, the many stories of these families and the many stories of the loved ones, the loss of life of a 7-year-old boy, and his father, all of them seeking opportunities. I don't believe there was a terrorist amongst the group, nor have we determined the bulk of these individuals come to do harm.

With that in mind, however, I still believe we must find the right kind of balance. Last week, prosecutors indicted 14 people who allegedly organized or facilitated the smuggling incident that ended on May 14th, when a crowded trailer was found abandoned at a truck stop in Victoria, 100 miles southwest of my home town of Houston.

The 14 were charged with various counts of conspiracy to conceal or transport immigrants. Twelve could face the death penalty if prosecutors decide to pursue it. More than 70 immigrants from Mexico, Central America and the Dominican Republic were crammed into the tractor trailer. Among the dead was a 5-year-old boy from Mexico. 17 immigrants died at the scene, and three others have died later. That is the human tragedy. And this hearing must put a human face to that loss.

According to U.S. Attorney Michael Shelby, alien smuggling is all about money. These aren't people who are trying to make a better life for others, that is the smugglers, and just providing them a pathway, this is about an American dollar and people that will do anything and risk anyone's life in order to gain that dollar bill.

I can imagine that that tractor trailer driver thought that he was doing nothing more than would warrant a traffic ticket. In this incident, the price per immigrant was \$1,500 to \$1,900. Alien smugglers have reaped millions of dollars in profit with some not only collecting a fee up front, but also robbing, beating and raping the immigrants once they get into the United States.

Last year, the General Accounting Office investigative arm of Congress was critical of the U.S. Immigration and Naturalization Service, with respect to its efforts to combat alien smuggling. The GAO said that the INS efforts to curb the smuggling were disorganized, seldom tracked, and did not meet the required level of accountability.

The investigators stated further that in several border States, including Arizona, multiple antismuggling units existed that had overlapping jurisdictions, but were unable to handle the job properly. The INS has since been disbanded and its enforcement divisions have been folded into the Department of Homeland Security as part of the Customs and Border Protection.

It does not follow necessarily, however, that this organizational change will result in more effective field operations. We need to do a better job. The Arizona border with Mexico has become the hub of alien smuggling, about one-third of the 1.2 million arrests of undocumented immigrants that the Border Patrol expects to make this year will occur along that border.

Last year Border Patrol agents in Tucson Sector apprehended 449,679 undocumented aliens, more than 1,200 a day. We must get to the bottom line of this particular issue.

And, Mr. Chairman, I have been working on this issue for a very long time, as I have watched it. Now, more closely, in light of the fact that we had this enormous number of deaths. Our highest priority should be to solve the problem and to reduce deaths. I will be introducing a bill that I would look forward to receiving bipartisan support working with our advocacy groups, our law enforcement groups, that will have a three-point program. The first point of this program would provide incentives to encourage informants to step forward and assist the Federal authorities in order to smash these rings.

My bill would also involve the ability to access legalization for those who would come into the country who would help us smash those rings. My bill would establish a new third category for aliens who assist the United States Government with the investigation, prosecution and conviction of commercial smuggling operations. This would be a nonimmigrant visa classification. The real incentive, however, would not be a nonimmigrant visa, it would be a lawful permanent resident status.

In addition, the bill would offer a monetary incentive to become an informant. It would establish a reward program to assist in the elimination or disruption of commercial alien smuggling operations in which aliens are transporting groups of 10 or more, and where



either the aliens are transported in a manner that endangers their lives or the smuggled aliens present a life-threatening health risk to the people in the United States.

The rewards program will be similar to the one the State Department presently uses to obtain informant's information. We have been able to talk to a number of law enforcement agencies, and Federal agencies, who find these aspects of this legislation to be not only humanitarian, but more importantly, they believe that this will go a long way to help smash the commercial smuggling rings that do so much to undermine the lives and cause the deaths of innocent persons.

Today this hearing, I believe, will go a long way in giving us insight, and I am delighted as well that the Chair will be introducing Maria Jimenez, who has always been an advocate for the rights of immigrants in a positive way. She has founded the AFSCILEMP, Immigration Law Enforcement. She has been monitoring these efforts since 1987. She has also played an important role in the creation of various other programs in the community, the Houston Immigration and Refugee Coalition, and she has worked very hard to bring a balance to the lives of those who seek simply an opportunity.

Mr. Chairman, I thank you, and I would ask to submit the entirety of my statement into the record.

Mr. HOSTETTLER. Without objection.

Mr. HOSTETTLER. The Chair now recognizes the gentleman from Arizona, for 5 minutes, Mr. Flake, for an opening statement.

Mr. FLAKE. I thank the Chair. I thank the Chair for holding this important hearing. I have actually been requesting a hearing like this on the border in Arizona for a couple of years now. I think we would all benefit from actually going to the border and see what we face right up close and personal.

But, this is a good start. I am glad we are here today. If you read the papers in Arizona, you see that just about every day in the summer, on the average, more than one immigrant dies every day in the summer time in Arizona, crossing during the desert heat. It is a very troubling situation. There are countless stories of lost lives, destroyed property, and mistreated people.

We have got to do something to change it. In addition, health care costs in Arizona have skyrocketed. Hospitals have had to cut back crucial services to the population in Arizona, because of the cost of treating those who cross the border illegally.

Shootings on the border are happening more frequently all the time. Frustrated property owners have seen their property destroyed and fearing that immigrant traffic across their property will destroy more, have taken matters into their own hands. It is a very unhealthy situation. Family members of illegal aliens who have perished in the desert are now seeking redress by suing the U.S. Government.

We are having situations like that as well. We may not agree with the choices taken by these immigrants to break the law, but you can't help but be moved by the fate that awaits them, and the abuse at the hands, in particular, of smugglers.

As legislators, we are charged with addressing these problems. And I think that we in Congress have to stand up and see what

we really can do, and not just say this is what we have done in the past, we are going to do more of this. But let's do what is going to work. And I feel that we have to have a relief valve of some type in the border region to allow those who are similarly coming to work, for no other reason than to provide a better life for their family, to provide a temporary worker program, to direct the flow of workers through legal channels.

If we do that, we can free up a lot more resources to actually focus on those who would do us harm. And we always have to be reminded that the border region is dangerous. We cannot take it for granted that everyone who is coming here is coming just for work. But we know that overwhelming majority of those who come across are coming just for that reason.

There is a demand in the U.S. for the labor that Mexican laborers, in particular, are willing to provide. And we can't turn a blind eye to that. The market forces are just too strong to resist. I believe that many of the aliens that are coming across know the risks quite well, and they are still willing to take them, that is how strong the pull is. And that is why we have to address it.

If we have a legal channel, as I mentioned, then we can address that much more easily. It used to be, prior to 1986, before the Immigration Reform and Control Act, the flow of immigrants from Mexico to Arizona was largely circular. The average stay of an immigrant was about 2.6 years. What we managed to do with increased border enforcement is ensure that those who make it here actually stay longer.

The average stay now is 6.6 years. So we haven't actually stopped anybody, I would maintain, that really wants to get here. We have made it more difficult. What we have done is make sure that those who manage to get here stay longer. It is more difficult to go home and visit their families. So they are more likely to bring their families with them. So they won't have to cross the border again and again. We have to address this. We have to have a legal framework to do so.

From 1986 to 1998, the number of tax dollars that Congress appropriated the INS increased eightfold, sixfold for the Border Patrol alone. The number of Border Patrol agents assigned to the southwest border doubled to 8,500. But the end result, we still have 7 million illegal immigrants here in the U.S. How can we honestly tell the taxpayers that our strategy has been a success? We have got to take a new approach.

According to Steven Camarota of the Center for Immigration Studies, a real effort to control the border with Mexico would require perhaps 20,000 agents, and development of a system of formidable fences and other barriers along those parts of the border used for illegal crossing.

I would say that the wisdom of embarking on such a strategy is suspect at best. We have to recognize that if you sealed the border tight as a drum, theoretically, and I don't believe you could, but theoretically if you did, 40 percent of those who are here illegally entered the country legally. And you not going to solve the problem that way. We have got to look at other things as well.

Myself and a couple of colleagues, Congressman Kolbe, Congressman Reyes, are working on legislation to address these concerns.

We know that along the border region, immigrant smugglers can earn up to \$1.5 million dollars a day. Not each but as a whole. With that kind of money, with those kind of market forces, it is simply irresistible. We need to take a serious look at what our current border policy has wrought, and acknowledge that there may be a better way to address this situation. We need to put the smugglers out of business by formulating a more realistic approach.

I thank the Chair again for this important hearing and look forward to the testimony of the witnesses.

Mr. HOSTETTLER. I thank the gentleman from Arizona. The Chair now recognizes the gentlelady from California, Ms. Sánchez, for an opening statement.

Ms. SÁNCHEZ. Thank you Chairman Hostettler, and Ranking Member Jackson Lee for holding this important hearing. And thank you to the witnesses for being here today to discuss the problem of immigrant smuggling. Last month we were shocked to hear about the deaths of 19 immigrants who had been smuggled into Texas in a tractor trailer. 19 people suffocated while trapped in the back of a truck. I say we are shocked, but sadly I don't think we are very surprised.

The truth is, that deaths along the border occur far too frequently. For the past 18 years, there have been border deaths of 200 to 400 people almost every year. Not all of those are coming across the Mexican border either. Deaths happen among the boatloads of people coming from Asia and the Caribbean as well.

So who is at fault here? It is hard to really say. The smugglers, I think we can all agree, are at fault for transporting people in deadly conditions. But, is it fair to say that this country bears part of the blame? Maybe.

Perhaps our immigration policies have created an environment where desperate people will take desperate measures just for the small chance of improving their lives.

Conditions in the majority of countries around the world are frightening. Nearly 50 percent of people living in subSaharan Africa in 1998 were surviving on less than \$1 a day.

In 1995, when per capita income in North America was roughly \$22,000, the majority of the people of the world were surviving on less than half of that, \$10,000 per capita in Eastern Europe and Central Asia, a mere couple of hundred dollars in Asia and the Pacific. So it should not be surprising that some people, unable to enter this country legally, are willing to take great risks and find another way to enter.

There may be other parties to blame as well. There are American companies actively seeking out and enticing workers from across the border to come here undocumented, for work, because these companies know that they can pay them low wages and no benefits.

The bottom line to me is that people are dying and we need to address the problem. We need to work together to figure out what make the various—what are the various causes and how we can remove them. Cracking down on smugglers is certainly one step, but it doesn't solve the ultimate problem.

Until we take sensible positions on immigration and address the core reasons why people emigrate, we cannot expect this problem

to go away. Clamping down on the borders is likely to lead to even more desperation. Maybe it is time for this nation to revisit guest worker programs that allow workers to ultimately adjust their status and become fully participating members of society.

I look forward to hearing from the witnesses on this important and timely topic. And I yield back the balance of my time.

Mr. HOSTETTLER. I thank the gentlelady from California. The Chair now recognizes the gentleman from Iowa, Mr. King, for an opening statement.

Mr. KING. Thank you, Mr. Chairman. I want to thank you for holding this important hearing. I want to thank the witnesses in advance for what you are about to present to us. My home community where I graduated from high school is Denison, Iowa, where we lost 11 illegal immigrants in the train car last fall. That loss, it was ghastly and it was shocking, and it shocked and grieved my community and the communities of those families who lost those victims to that crime, and it was more than one kind of crime.

As I look across this list that I see, actually from Mr. Homan's testimony, 11 in Iowa, 17 in Texas, 3 in Washington, 6 in California, I think Mr. Flake has the strongest argument in Arizona, 133 incidents, 10 in New York, 41 Florida. I know this isn't all of the statistics, but I know it is a representative sample of what we are seeing here and what we are up against.

There are going to be two different viewpoints on this. One of the viewpoints says, whatever fashion, in whatever nuance, open the borders and we won't have this problem. The other one says, if we do that, what kind of problems will we create? And I think that Ms. Sánchez brought up something that is very interesting to me, and an interesting perspective that we all need to evaluate. That is, the question that I asked at a hearing last week is, what does this country look like? What does the world look like if we simply erase our borders and go with an open borders policy without restriction?

None of those testifiers at that hearing seemed to have an answer to that question. I was kind of surprised at that. I think that this is the question that we need to be asking, in all of the policy that we implement from here on out, and the policy that we have implemented in the past should have taken into account. We should have that equation in mind.

So I propose this one: If you want to have some kind of a prediction of what people will do, start with the premise that people follow money. And that is the reference that Ms. Sánchez brought forth. I would do this, take the population of the United States, and divide it by our gross domestic product. Then take the population of our contiguous neighbors, individually, and divide that by their gross domestic product.

Compare those two figures and therein you will see the incentive for illegal transfer across the border. It is an economic equation. There is also a social equation here. We have a culture that is attractive, that we should preserve and protect it. We have a good educational system. We have a high quality of life. All of those things are part of it. But we can quantify and understand the economic equation.

Then, if you can look at the comparison between our southern border, which we are talking about here today, and the differences between the individual income, the average per capita income of the two nations, if you can measure that and see that quantifiable difference, then think about the implications of the open borders beyond that—open borders that go into the western hemisphere and around the world—and in fact, we already have an open borders policy in this country. Anyone who wants to come into the United States and can make a credible allegation of citizenship can enter into the United States of America through any country, and from the western hemisphere except for Cuba. And I am not convinced that all of those countries have a real tight border policy. So we can go into the discussion about how important it is to preserve our borders, and how we are going to be able—if we don't do that—how the sovereignty of any nation can be sustained without preserving its borders.

But I am going to be interested in looking at this from the perspective of how we improve border security and how we improve internal enforcement. Attorney General Ashcroft sat there a couple of weeks ago. And of those who were adjudicated deported, 85 percent blended back into society.

So I am going call this the 85 percent rule. If 85 percent whom we spend the money, and I can't verify this number, but I am hearing \$35,000 as kind of an average cost for adjudication for deportation. If we spent that kind of money and that kind of effort to deport people, and 85 percent of them simply disappear back into society, and then the 85 percent rule also applies, and that is 85 percent of the methamphetamine that comes into Iowa comes across our southern border.

Those two factors mean something to me. I think we have a responsibility to the citizens of this country to provide them the best opportunity for a high standard of living. We have got an obligation to provide those opportunities in other countries in the world and export our economy and the way of life.

This is my perspective and I am interested in your testimony. Thank you, Mr. Chairman. I yield back.

Mr. HOSTETTLER. I thank the gentleman from Iowa.

I would like to now introduce the panel—

Oh, excuse me. I apologize. The Chair now recognizes the gentleman from Texas, Mr. Smith, for his opening statement.

Mr. SMITH. Thank you, Mr. Chairman. I know you are eager to get going. And I won't take up my entire 5 minutes. Unfortunately, I have a conflict at 11 o'clock, so I appreciate the opportunity to make some opening comments since I may not be able to stay for the question period.

And let me just say that during the question period, I hope that our witnesses will have an opportunity to respond to a crying need to try to prevent these terrible tragedies from occurring in the future.

But, I think that if we are going to be successful in this prevention effort, it is going to require the cooperative effort of both countries, when we are talking about our southern border, both the United States and Mexico. And I hope one or more of our witnesses will respond and let us know for instance what the country of Mex-

ico is doing to try to prevent or to try to discourage individuals from heading north, into dangerous circumstances, dangerous environment and unfortunately many times leading to their deaths.

But, what is the country of Mexico doing to discourage this type of illegal immigration that unfortunately results in these kinds of tragedies that the hearing is on today?

The other thing, Mr. Chairman I want to mention, is that it has been a surprise to me to hear some people say that as a result of these deaths, as a result of the harm that is occurring to individuals who are trying to come into the country illegally, that somehow that is an argument for legitimizing illegal immigration or regularizing illegal immigration or making it easier for people to come into the United States. I just don't see it that way.

Just to propose an analogy here. If, for example, you have a lot of people trying to break into your house, may instead of the country, but using the metaphor here, if you had a lot of people trying to break into your house, the answer isn't to open your doors and say, well, whoever wants to come in, come in or make it easier for people to do so. That is going to even lead to more dire consequences, for, in this case, the homeowner, or for the United States.

So I think we need to be careful as to how we use these tragedies, and not use them in a way that I don't think is logical.

The other things that I have also heard some people say, that somehow this is the United States's fault because we are a prosperous country and have jobs for people. And that somehow that attraction is responsible for peoples' deaths.

Well, again the analogy to me is like a homeowner who might have some nice possessions in his house, he might have a big screen TV, he might have some jewelry. And, if is someone is trying to break into that house, I don't consider that to be the fault of the homeowner with the nice things in his house. I think you still need to prevent people from taking illegal actions and protect the people who have a right to live under the laws of their country.

And so I don't think we ought to use these tragedies to try to promote certain immigration policies that are inimical to the best interests of the United States. What we ought to try to do, as I started off by saying, is to coordinate and cooperate with the country of Mexico to try to prevent these deaths from occurring in the first place, not take actions that either condone those actions or lead to more dire consequences for the people who live in the United States.

I thank you, Mr. Chairman. I yield back.

Mr. HOSTETTLER. Thank the gentleman for his opening statement.

The Chair will now recognize the panel of witnesses for introductions. Jose Garza has been the Border Patrol's chief patrol agent in the McAllen Sector since 1995. He previously served as chief patrol agent in the Laredo Sector for 9 years.

Agent Garza began his career with the Border Patrol in 1969 as an agent in Laredo, TX. He also has been an immigration inspector and supervisory inspector, officer in charge of two international land border ports of entry, assistant chief patrol agent and deputy

chief patrol agent. Prior to joining the border patrol, Agent Garza served in the U.S. Navy.

Tom Homan is the Bureau of Immigration and Customs Enforcement Interim Associate, Interim Special Agent in Charge in San Antonio, TX. He entered on duty with the border patrol in 1984 and was in the San Diego sector until 1998.

He served as a special agent, supervisory special agent, deputy assistant, district director for investigations in Phoenix, AZ, and assistant district director of investigations in both San Antonio and Dallas, TX.

Agent Homan has worked anti smuggling investigations resulting in the dismantling of 13 alien smuggling organizations. He was one of the lead investigators in the recent Victoria, TX, smuggling investigation.

Peter Nuñez began his career in law enforcement in 1972 as a Federal prosecutor in the U.S. Attorney's Office in San Diego, CA. He was appointed as the U.S. Attorney in San Diego by President Reagan in 1982, where he served through August 1988.

In 1990 he was appointed by President George Bush to be the Assistant Secretary of the Treasury for Enforcement. Mr. Nuñez is a member and past president of the San Diego Crime Commission, the past vice president of the San Diego Prevention Coalition, a member of the board of directors of the Center for Immigration Studies, and a member of the board of visitors at the University of San Diego School of Law.

He has been a lecturer in the political science department at the University of San Diego since 1997, specializing in criminal justice, international law enforcement, and immigration policy.

Mr. Nuñez graduated from Duke University, served in the U.S. Navy, and graduated from the University of San Diego's School of Law.

Maria Jimenez is the chair of the Mayor's Advisory Committee for the Office of Immigrant and Refugee Affairs of the City of Houston. She has always been an advocate for immigrant rights. She founded the immigration law enforcement monitoring project in 1987 and created various other community groups such as the Houston Immigration and Refugee Coalition.

Ms. Jimenez worked as a union organizer in Texas, and 10 years as a community organizer and adult educator in Mexico. She sits on several boards, including the AFL-CIO Union Community Fund and has received several community service awards.

I thank the witnesses for being here today. Mr. Homan's full testimony will be over 5 minutes because he brought with him some very enlightening video of a smuggling operation. So I will be a little lenient with the 5-minute oral testimony rule today.

Mr. Garza, the floor is yours, and without objection, your full testimony will be in the record. And you are free to testify at this time.

**STATEMENT OF JOSE GARZA, CHIEF PATROL AGENT,  
McALLEN SECTOR, BORDER PATROL, BUREAU OF CUSTOMS  
AND BORDER PROTECTION, DEPARTMENT OF HOMELAND  
SECURITY**

Mr. GARZA. Chairman Hostettler, Ranking Member Jackson Lee, distinguished Subcommittee Members, I am honored to have the opportunity to appear before you today to discuss the efforts of the U.S. Border Patrol to prevent and deter the entry and smuggling of undocumented aliens into the United States.

My name is Jose E. Garza, and I am the chief patrol agent of the McAllen, Texas Border Patrol sector, Bureau of Customs and Border Protection. I would like to begin by giving you a brief overview of the McAllen Border Patrol Sector. The McAllen Sector is one of 21 border patrol sectors nationwide. We are responsible for patrolling 284 miles of international border between the United States and Mexico, and 232 miles of coastline along the Gulf of Mexico.

We are responsible for 19 South Texas counties which cover 17,000 square miles. We have 1,484 uniformed agents assigned and 200 support personnel. The workforce is deployed at nine stations, which include two checkpoint stations and one coastal station located at Corpus Christi, TX.

In 1997, illegal immigration was at all time high in the McAllen Sector. Border violence, drug and alien smuggling were rampant. Farmers and ranchers and the local community were complaining about the increasing numbers of illegal aliens transiting their properties. Local police were responding to numerous complaints relating to illegal entrants committing crimes and other offenses in the Brownsville, TX area on a daily basis.

Fiscal year 1997 was a big year for sector apprehensions as we arrested nearly 245,000 illegal entrants. In August 1997, McAllen Sector initiated Operation Rio Grande as part of the Border Patrol's national strategy to control the border.

The concept of the operation was to forward deploy agent and technical infrastructure to the immediate border to prevent and deter illegal entry into the country.

Our operational manpower doubled from 701 agents to the present level of 1,484. Technical infrastructure such as lighting, sky watch observation platforms, infrared cameras, boats, fingerprinting technology, night vision equipment, aircraft and other equipment were purchased and provided the McAllen Sector.

Our efforts have been very successful with decreases in illegal entries since Operation Rio Grande began. I am proud to say that in fiscal year 2002 we apprehended 89,928 illegal entrants which is a 63 percent decrease from the 1997 levels when we apprehended nearly 245,000.

Fewer illegal entries have resulted in positive relationships with farmers, ranchers in our area and also with the communities. Crime rates in places like Brownsville, TX have decreased, increasing officer safety, safety of aliens and safety of the Brownsville residents.

Due to our efforts in reducing the number of illegal entrants in McAllen Sector, we never experienced problems with vigilante groups, citizens or ranchers taking the laws into their own hands.



Building on the public safety and humanitarian initiatives embraced by the U.S. Border Patrol, the McAllen Sector has been a leader in initiating various border safety initiatives to help reduce accidents, incidents and loss of life along the border.

Among these initiatives are Operation Life Saver, which is the establishment and promotion of a sector 1-800 toll free number where citizens can call for assistance or to report suspected illegal activity. We have trained 44 emergency medical technicians and four paramedics, equipped border patrol vehicles with water rescue and first responder equipment to render aide to victims of border violence and crime.

Providing swift water rescue training to Border Patrol agents and Mexican officers, initiation of a Border Patrol boat patrol to patrol the Rio Grande River 24 hours a day, filming public service announcements that have been aired in Mexico, Central America and the United States.

Producing a videotape that is shown to all aliens coming in contact with McAllen Sector Border Patrol agents, warning them of the dangers involved in crossing the border illegally.

The sector in addition to all of these initiatives maintains three 24 hour per day, 365 day per year traffic checkpoints at strategic locations leading from the border to the interior of the United States.

These inspection stations are an integral part of our layered border control strategy and the last line of defense at the border. The traffic flows through these stations are voluminous, and we are not capable under our present infrastructure and governing Supreme Court decision to inspect and search every vehicle. They, however, are a deterrence and disrupt a tremendous amount of illicit activities and smuggling to the interior of the United States.

Since March of 2003, the Border Patrol has been part of the Bureau of Customs and Border Protection. We are still adjusting to the transition.

We believe that with the increased communication, coordination and one mission, which is protection of the border, that our reorganized border patrol will be able to do a better job. With the recent tragedies on the border and attention on our national security, the importance of having a strong border patrol cannot be overemphasized. I would like to thank the Committee for the opportunity to present this testimony today, and I would be pleased to respond to any questions the Committee may have.

Mr. HOSTETTLER. Thank you, Agent Garza.

[The prepared statement of Mr. Garza follows:]

#### PREPARED STATEMENT OF JOSE E. GARZA

Chairman Hostettler, Ranking Member Jackson Lee, and distinguished Subcommittee Members, it is my honor to have the opportunity to appear before you today to discuss efforts to prevent and deter the illegal entry and smuggling of undocumented aliens into the United States, through operations and law enforcement initiatives of the United States Border Patrol, now a component of the newly created Bureau of Customs and Border Protection.

My name is Jose E. Garza, and I am the Chief Patrol Agent of the McAllen, Texas Border Patrol Sector, Bureau of Customs and Border Protection. I would like to begin by giving you a brief overview of the McAllen Border Patrol Sector.

The McAllen Sector is one of twenty-one Border Patrol sectors nationwide and serves an integral part in securing our nation's borders. We are responsible for pa-

trolling 284 linear miles of international border between the United States and Mexico, and 232 miles of coastline along the Gulf of Mexico, encompassing 19 South Texas counties which cover 17,000 square miles. We have 1,482 uniformed officers assigned to McAllen Sector, who perform various types of enforcement duties. The agents are deployed at nine stations, two of which are specifically assigned traffic checkpoints in Falfurrias and Kingsville, Texas, and one that is coastal station in Corpus Christi, Texas.

In late summer, 1997, illegal migration in McAllen Sector was at an all-time high. The indicators that the situation was critical were evident to all who lived and worked in the border community. The associated criminal activity that accompanies an uncontrolled border was of great concern: Border violence, and drug and alien smuggling were taking their toll on urban and rural border residents. Farmers, ranchers and the local community were complaining of increased numbers of illegal aliens transiting their lands. Border communities, such as Brownsville, Texas, were increasingly alarmed, and faced with an atmosphere of swelling violence, which was degrading their quality of life. Local police were receiving numerous calls relating to illegal entrants committing petty and serious offenses in Brownsville on a daily basis. Fiscal year 1997 was a peak year for McAllen Sector in apprehensions, as we arrested nearly 245,000 illegal aliens.

In August of 1997, McAllen Sector initiated *Operation Rio Grande* as a part of the Border Patrol's national strategy to control our nation's borders. McAllen Sector was prioritized in Phase II of the national strategy, after Phase I operations involving El Paso's *Operation Hold the Line*, San Diego's *Operation Gatekeeper*, were shown to have a significant effect on illegal migration along the El Paso and San Diego corridors. In keeping with our national strategy, the concept of the operation was to forward deploy our agent staffing and tactical infrastructure resources along the immediate border area, the Rio Grande River, to prevent and deter the illegal entry and smuggling of aliens into the United States at the border itself.

Our operational manpower was increased from 701 agents to the present levels, as the national strategy has progressed. Tactical infrastructure such as portable and permanent lighting structures, sky-watch observation platforms, infrared cameras, boats, fingerprinting technology to measure recidivism and detect wanted criminals, night vision equipment, newer aircraft and other equipment was purchased and assigned to the sector. In essence, the new mindset and way of doing business was fostered in line with the national strategy and McAllen went from an apprehension-based strategy to a strategy that promoted control through prevention and deterrence.

Our efforts have been very successful, with decreases in apprehensions and illegal entries since *Operation Rio Grande* began. I am proud to say that in Fiscal year 2002 we apprehended 89,928 illegal entrants in the McAllen Sector. Although this is still a tremendous workload, there are now significantly fewer arrests, due to the focused strategy of *Operation Rio Grande* and the efforts put forth by our dedicated men and women. Through it all, McAllen Sector has maintained and encouraged a positive relationship with area ranchers, farmers and the local community. The crime rate along the southern corridor of the McAllen Sector paralleled the decline in apprehensions. The crime rate in places like Brownsville, Texas has decreased, and the safety for our officers and the local population has dramatically improved. The overall quality of life was better due to enhanced enforcement by our agents.

Remotely monitored sensing devices have been placed along smuggling routes leading away from the Rio Grande to monitor the movement of persons trying to illegally enter the United States. Mobile observation platforms called "Sky-Watch" towers, platforms that extend twenty feet into the air and are used to watch large portions of the river, have been placed at strategic locations along the river. Remote Video Surveillance Systems have also been placed at twenty-nine strategic locations along the river. These systems have both day and night cameras and are monitored twenty-four hours a day, seven days a week for any illegal activity. A Boat Patrol was established in February of 1998 to detect and deter illegal activity, as well as to gather intelligence along the river. Twenty-six specially trained K-9 teams have been permanently stationed at our two permanent traffic checkpoints.

Building on longstanding public safety and humanitarian measures practiced by the U.S. Border Patrol, we have implemented initiatives to increase border safety within the McAllen Sector and have taken steps to enhance our levels of preparedness. Over the past several years, unscrupulous alien smugglers have moved migrants into more remote areas with hazardous terrain and extreme conditions. As smuggling tactics and patterns have shifted, our strategy has been flexible enough to meet the challenges head on. The Sector's Special Response Team (SRT) and Border Patrol's Search, Trauma and Rescue Teams (BORSTAR) have received training in search and rescue, and Border Patrol Emergency Medical Technicians (EMT's)

have been placed in each Station. At the present time there are 44 trained EMT's in the Sector.

The Boat Patrol was established by the McAllen Sector as a border safety tool and as a deterrent to prevent illegal aliens from entering into the United States. The Boat Patrol has deterred the entry of thousands of illegal aliens within our sector. Furthermore, the patrols have served as a Border Safety tool by rescuing hundreds of potential drowning victims, many of which were abandoned by smugglers. The Boat Patrol has become an integral part of our every day operations. We have enhanced our Air Operations to increase aerial vigilance in remote areas in our efforts to prevent alien deaths directly attributable to the high heat and limited water sources in remote South Texas.

The McAllen Sector Public Awareness Program is a proactive network of contacts that aggressively facilitates the dissemination of information. Working with local Television, Radio and Newspaper agencies, we have developed and delivered public service announcements and advertisement campaigns to increase public safety awareness and to educate the public regarding our mission, which has benefited our law enforcement efforts throughout the region.

The McAllen Sector maintains three 24-hour checkpoint operations in the sector, which are strategically located to prevent and disrupt alien and narcotic smuggling. Border Patrol Checkpoints are an integral part of Border Protection measures. Their strategic placement and operation provides increased control and deterrence at the border. The presence of a Checkpoint forces smugglers and illegal entrants to change their entry and travel patterns to border cities and away from the border. Sustained border enforcement presence, supported by Checkpoints that screen traffic traveling away from the border, adds an additional level of security nationally. It is of utmost importance to note that operations conducted at these checkpoints are not based upon authority similar to border inspections at ports of entry, with regard to searches and seizures, but are exercised based upon authority granted from Supreme Court decisions. Current case law also supports operating checkpoints in the same location to assure maximum law enforcement benefit while protecting 4th amendment guarantees.

Even though Border Patrol Agents have the authority under Section 287 (a) (3) of the INA to "board and search" any vessel, railway car, aircraft, conveyance or vehicle within a reasonable distance from any external boundary or border for aliens, **agents must still have probable cause in order to conduct a search for contraband as outlined in *Almeida-Sanchez v. U.S.*, 413 U.S. 266 (1973).**

In *U.S. v. Brignoni-Ponce*, 422 U.S. 873 (1975), the court held that "officers on a roving patrol may stop vehicles only if they are aware of specific articulate facts, together with rational inferences from those facts, that warrant reasonable suspicion that the vehicle contains aliens who may be illegally in the country."

In both *Almeida-Sanchez v. U.S.* and *U.S. v. Brignoni-Ponce*, the court held that **"no act of Congress can authorize a violation of the constitutional protection against unreasonable searches and seizures."** Border Patrol agents are required to skillfully and prudently exercise the authority granted to them, balancing the standards between reasonable proof and probable cause during detainment and questioning of undocumented aliens, vehicle stops, and searches and seizures.

The challenges we face with existing infrastructure at our checkpoints will continue to be addressed in an effort to update, expand and modernize, and we will continue to work diligently under the limitations that now exist. With an ever-increasing volume of traffic, agents in the McAllen Sector have mere seconds to conduct immigration checks, and to decide if probable cause exists to warrant additional inspection.

The McAllen Border Patrol Sector continues to help lead the way in an effort to increase border security, and curb illegal alien and drug smuggling along the southwest border. In fiscal year 2002, McAllen Sector apprehended 89,927 undocumented aliens. Of those apprehensions, 11,339 were of persons whose nationality was other than Mexican (OTM). The sector also made arrests in 1,382 alien smuggling cases, involving 1,610 alien smugglers and 7,558 smuggled aliens. During fiscal year 2003 (through May), the Sector has apprehended a total of 50,744 undocumented aliens, of which 8,910 were OTMs. During this time, the sector has also made arrests in 1,233 alien smuggling cases, involving 1,462 alien smugglers and 5,468 smuggled aliens.

McAllen Sector is also among the leaders on the Southwest border in narcotics cases. In Fiscal Year 2002, the sector made 1,692 narcotic seizures, including 1,492 seizures of marijuana totaling 334,630 pounds, 10 seizures of heroin totaling 125 pounds, and 171 seizures of cocaine totaling 6,902 pounds. During Fiscal Year 2003 (through May), the sector has recorded a total of 1,151 cases, including 1,008 sei-

zures of marijuana totaling 210,644 pounds, 8 seizures of heroin totaling 86 pounds, and 89 seizures of cocaine totaling 4,200 pounds.

Not only does the Border Patrol provide a significant law enforcement presence in the region, we are also recognized as a major source of information and intelligence. Our Sector Intelligence Unit is recognized as a major source of information regarding Special Interest Aliens in the Lower Rio Grande Valley of Texas. Recognizing that border security cannot be a singular effort, but a collaborative, multi-agency effort; we coordinate our efforts, disseminate information, and share intelligence with other federal, state and local law enforcement agencies, strengthening the cord of better enforcement, better intelligence and better security.

Nationally, the Border Patrol is tasked with a very complex, sensitive, and difficult job, which historically has presented immense challenges, and for which we have been given 100% responsibility. Since March 1, 2003, the U.S. Border Patrol has been a part of the newly established Bureau of Customs and Border Protection within the Department of Homeland Security. The Border Patrol is proud to be the "front line" of defense for this very important mission. The challenge is huge, but one which we face every day with resolve and dedication. Together with our new partners, we are standing "shoulder to shoulder," to present "one face" at the border.

I would like to thank the Committee for the opportunity to present this testimony today, and I would be pleased to respond to any questions that the Committee may have at this time.

Mr. HOSTETTLER. Agent Homan.

**STATEMENT OF TOM HOMAN, INTERIM RESIDENT AGENT IN CHARGE, SAN ANTONIO, TX, BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT, DEPARTMENT OF HOMELAND SECURITY**

Mr. HOMAN. Mr. Chairman, and Members of the Committee, thank you for the opportunity today to address you regarding the efforts of the Bureau of Immigration and Customs Enforcement, known as BICE to combat the smuggling of illegal aliens into the United States.

I am the associate special agent in charge in San Antonio, TX and recently assisted in the investigation into the deaths of 19 smuggled aliens in Victoria, TX. I am pleased to have the opportunity to share my experience and knowledge with you regarding this important issue.

Specifically, I am here to testify regarding alien smuggling and human trafficking, which includes smuggling related deaths, juvenile smuggling and trafficking, roles and the effects of organized crime, and the nexus with terrorism.

The creation of the new Department of Homeland Security, and specifically BICE, combined legal authorities, investigative tools to effectively combat organized human smuggling and trafficking by investigating and prosecuting criminal organizations involved in smuggling and harboring of aliens, money laundering, racketeering violations, human trafficking and child forced labor provisions.

In addition, the new BICE structure provides a more effective means of dismantling, disrupting the criminal activities of those organizations. With tools such as financial data, analysis, telecommunication intercepts, and air and marine interdiction capabilities.

I would like to begin by providing an important clarification, a necessary distinction between the terms of alien smuggling and human trafficking. Alien smuggling and human trafficking, while sharing certain elements are different offenses. In some respects,

human trafficking may be regarded simply as an aggravated form of alien smuggling.

Human trafficking involves force, fraud or coercion, and it occurs for the purpose of force labor or commercial sexual exploitation. Alien smuggling is an enterprise that produces short-term profits based on migrants smuggled.

Trafficking enterprises rely on forced labor or commercial sexual exploitation of the victim to produce profits over the long term and the short term.

Smugglers are willing to risk potential death seeking their dream and are normally free to seek it once they reach their final destination. On the other hand, we know that trafficking victims find themselves in a servitude arrangement that does not end once they have reached their final destination.

Human smuggling has become an international lucrative criminal market in the United States. This trade generates an enormous amount of money, globally an estimated \$9.5 billion per year. The commodities involved in this trade are men, women, and children, coming from as far away as China, Ukraine and Thailand.

The trafficker's goal, like the smuggler is to maximize profits. The U.S. Department of State has estimated that at any given time, there are hundreds of thousands of people in the smuggling pipeline being warehoused by smugglers, and their primary target is the United States.

In recent years, there has been a surge in smugglers trying to smuggle juveniles into the United States. Smuggled children are often lured by promises of education, a new skill or a good job, other children are kidnapped outright, taken from their home villages or towns and brought and sold as commodities.

Attracted by enormous profits and minimal risk, criminal organizations at all levels of sophistication are involved in the trafficking of children as human cargo across international borders for sexual exploitation and forced labor.

BICE is developing a foreign and domestic strategy which includes the implementation of critical incident response teams. The purpose of these investigative teams is simple and effective. Beginning the investigation of a critical incident as quickly as possible, and assembling the broad spectrum of technical and subject matter expertise that is needed to solve the complex investigations.

These teams will consist of special agents drawn from BICE assets who possess specialized skills in the full constellation of investigative techniques, language and cultural skills, crime scene management, technical operations and forensics.

The national and international enforcement environment changed dramatically after September 11 attacks. BICE targets alien smuggling organizations that present threats to the national security. This emphasis recognizes that terrorists and their associates are likely to align themselves with specific alien smuggling networks to obtain undetected entry into the United States.

As in our war on terrorism, the most effective means of addressing these issues is by attacking the problems at the source and transit countries, thereby preventing entry into the United States. The overarching BICE strategy requires intelligence-driven investigations against major violators, specifically targeting organiza-

tions with ties to countries that support terrorist organizations such as al-Qaeda.

I brought along some images and video to illustrate the means and methods used by smuggling organizations, and how BICE is investigating these organizations.

San Antonio and Houston started an investigation 2 years ago called Operation Night Riders where we actually opened up our own load house. It was an undercover operation proprietorship case.

What you see there on the right hand side of the screen, that is a smuggling house that we set up. On the left hand side of the screen with the arrow pointing to it, that was our listening post. The smuggling house was wired for video and sound through every room, inside and outside.

This is another example to shoot it, the video cameras that we hid outside of the house and inside the house so we can see all of the aliens arriving at the house, and as they leave, and all of the communications inside the house were also monitored.

Again, this is video cameras hidden inside the house. We have undercover agents acting as load house operators, and we actually contracted with 11 different alien smuggling organizations to bring their aliens to our load house. We will house those aliens. We will make arrangements to get them to our final destination. By doing this, we identified the guides, the drivers, the main smugglers, we identified where the alien was going, who is paying the fees, we identified the full alien smuggling organization.

This is a picture of the listening post which was next door. We put it next door in case anything was to happen where we had quick response to the house. This clearly shows we had video cameras placed both outside and inside the house.

We have total 24/7 surveillance inside and outside of that house. This is a short film that is going to show the arrival of aliens that just crossed the border near Laredo, TX. They were in the back of this pickup truck for 6 to 7 hours. This shows how the smugglers have no concern for the health and safety of the aliens. These aliens, as you will see, will unload the front of that pickup truck. That is not a super cab. And you will see how many aliens come out of the front behind the front seat, and also how many come rolling out of the bed of that truck like sardines.

Again, they have been in this position for several hours. You are going to notice some of the aliens as they get out of this vehicle have trouble walking because they were in this position for so long. The person unloading the truck is one of the defendants that was prosecuted and arrested.

And as you can see this is during broad daylight. As the aliens get out of truck, they are going to enter the side fence. They enter the house through the back.

As the aliens enter the house, the load house operator who was an undercover officer, records their name, and records what smuggling organization brought them to the house. Again, we had 11 different organizations bringing aliens to this house.

At a later time we would bring the aliens one at a time to the table. They would call their relatives, let them know they are safely in the United States, they need to wire the agreed amount per

Western Union to our account, and then we would send them to their final destination.

This is the typical way that alien smuggling organizations operate. They are subcontractors, subcontractor guides, subcontractor load house operators, subcontractor transporters.

Now, you will see the target of the investigation open the back of the truck and they will start rolling out of the back of the truck, again having trouble walking, because they have been stuck in that position for 6 to 7 hours.

The good thing about this investigation is we controlled the house. We made sure they ate well. We made sure their medical needs were taken care of. The aliens were moved down to their final destinations. And since we were the ones that talked to the relatives, recorded those conversations, we were later able to go to those destinations, pick those aliens up, take them into custody. And many have served as material witnesses in the prosecution of the 11 organizations.

Mr. HOSTETTLER. That is six out of the cab were from behind and six out of the bed in a pickup truck.

Mr. HOMAN. Yes. Next screen, please. This is a load arriving at night. You see there are a lot of women and children in this load. There are babies in arms in this load. Again, callous disregard for their safety. They were bought in brought in the same arrangement. They are in the back of the pickup truck, in the bed of the pickup truck, stacked like cord wood. You can see this—they arrived 24/7. You can see a baby in arms. Many female aliens. They come in groups of 30 and 40 out of two pickups.

Next screen, please. And this is a group of smuggled Peruvians that came in that same night. This is just a quick shot of the inside of the house. At one point, we had over a 100 smuggled aliens inside this house.

Next screen. While we are waiting for the screen to load up, I can say that the undercover agents of this house were seasoned veterans of the legacy INS. Every room was, again, monitored, video, audio, we even had sensors put in the hallway. So we know when aliens were moving from one room to another. This is what I was explaining earlier. This alien is now meeting with our undercover agent. A contact will be made with his relatives saying he has arrived, he is in Houston at an undisclosed location. And their relatives or employer needs to wire money to our account, then we will send him to his final destination.

Next screen, please. The result of this investigation, we totally dismantled 11 alien smuggling organizations. Twenty people were found guilty. Only one went to trial. With a case such as this, rather than attacking organizations one at a time, we become part of the organization, we open up our own load house, we can totally dismantle many organizations rather than just doing one. The downfall? It is expensive, it takes a lot of resources.

If I can continue my testimony. Last month 19 undocumented aliens were found dead inside a tractor trailer in Victoria, TX. Four hours into their 300-mile trip to Houston oxygen ran out in their sealed trailer. Within 72 hours of the discovery, the collective efforts of special agents from BICE, our counterparts from Bureau of Customs and Border Protection, the Texas Department of Public

Safety, the Victoria County District Attorney's Office, the United States Secret Service, and the Victoria County Sheriff's Office led to the identification and arrest of 40 defendants in Ohio and Texas. As of today, a total of 14 defendants have been charged with various crimes involving alien smuggling. The successes that we achieved in this operation are a direct result of fully integrating BICE special agents, other personnel and equipment in a unified law enforcement effort. Still, the smugglers remain undaunted by this tragedy. They continue to use railroad cars and tractor trailers to move illegal aliens to the south Texas smuggling corridor. BICE looks forward to working with the Committee in our efforts to save lives and secure our national interests. I hope my remarks today have been informative and helpful to each of you in understanding the complexity surrounding these issues.

I thank you for inviting me to testify. I am happy to answer any questions you may have.

Mr. HOSTETTLER. Thank you, Agent Homan.

[The prepared statement of Mr. Homan follows:]

#### PREPARED STATEMENT OF THOMAS HOMAN

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, thank you for the opportunity today to address you regarding the efforts of the Bureau of Immigration and Customs Enforcement (BICE) to combat the smuggling of illegal aliens into the United States. I am the Interim Associate Special Agent in Charge in San Antonio, Texas and recently assisted in the investigation into the deaths of 19 smuggled aliens in Victoria, Texas. I am pleased to have the opportunity to share my experience and knowledge with you regarding this important issue. Specifically, I am here to testify regarding alien smuggling and human trafficking, which includes smuggling-related deaths, juvenile smuggling and trafficking, roles and effects of organized crime and the nexus with terrorism.

The creation of the new Department of Homeland Security, and specifically BICE, combined legal authorities and investigative tools to effectively combat organized human smuggling and trafficking by investigating and prosecuting criminal organizations involved in smuggling, transporting, and harboring of aliens; money laundering; racketeering violations; human trafficking and child forced labor provisions. In addition, the new BICE structure provides a more effective means of dismantling and disrupting the criminal activities of these organizations, with tools such as financial and data analysis, telecommunication intercepts, and air and marine interdiction capabilities.

I would like to begin by providing an important clarification and necessary distinction between the terms alien smuggling and human trafficking. Alien smuggling and human trafficking, while sharing certain elements and attributes and overlapping in some cases, are distinctively different offenses. In some respects, human trafficking may be regarded simply as an aggravated form of alien smuggling. Human trafficking, specifically what U.S. law defines as "severe forms of trafficking in persons," involves (unless the victims are minors trafficked into sexual exploitation) force, fraud or coercion, and occurs for the purpose of forced labor or commercial sexual exploitation. Alien smuggling is an enterprise that produces short-term profits based on migrants smuggled. Trafficking enterprises rely on forced labor or commercial sexual exploitation of the victim to produce profits over the long-term and the short-term.

Smugglers are willing to risk potential death seeking their dream and are normally free to seek it once they reach their final destination. On the other hand, we know that trafficking victims find themselves in a servitude arrangement that does not end once they have reached their final destination.

Human smuggling has become an international lucrative criminal market and continues to do so in the United States. This trade generates an enormous amount of money—globally, an estimated \$9.5 billion per year. The commodities involved in this illicit trade are men, women, and children. Traffickers or smugglers transport undocumented migrants into the U.S. for work in licit, semi-illicit and illicit industries. The traffickers' foremost goal, like the smuggler, is to maximize profits. The sale and distribution of smuggled humans in the U.S. is a global, regional, and national phenomenon. Women and children are trafficked short distances within the



U.S. (small towns to bigger cities), as well as coming from as far away as China, Ukraine and Thailand.

The U.S. Department of State has estimated that at any given time, there are hundreds of thousands of people in the smuggling pipeline, being warehoused by smugglers, waiting for new routes to open up or documents to become available—and their primary target is the United States.

While human trafficking cases have attracted media attention, the loss of life in an alien smuggling case is no less tragic. To illustrate the callous disregard smugglers have for human life I would like to provide you with the details of some tragic incidents involving deaths (noting that some of these smuggling cases may be trafficking cases as well):

**Iowa**—In October 2002, 11 undocumented aliens were found dead in a covered grain car near Dennison, IA. It was determined that they had been smuggled and their bodies trapped in the grain car for four months. This is an ongoing investigation.

**Texas**—Last month, 17 undocumented aliens were found dead inside a tractor-trailer in Victoria, Texas. Four hours into their 300-mile trip to Houston, oxygen ran out in their dark, sealed, hot, airless trailer. These aliens had beat their way through the trailer taillights in a desperate attempt to signal for help. Within 72 hours of the discovery, the collective efforts of Special Agents from BICE, our counterparts in the Bureau of Customs and Border Protection, the Texas Department of Public Safety, the Victoria County District Attorney's Office, the United States Secret Service, and the Victoria County Sheriff's Office, led to the identification and arrest of four defendants in Ohio and Texas. As of May 27, 2003, a total of twelve defendants have been charged with various crimes involving alien smuggling. The successes that we achieved in this operation are a direct result of fully integrating BICE special agents and other personnel, equipment and methodologies into a unified law enforcement effort. Still, the smugglers remain undaunted by the tragedy. They continue to use sealed railroad cars and tractor-trailers to move illegal aliens through the South Texas smuggling corridor.

**Washington**—In January 2000, three undocumented aliens were found dead in the cargo container of a vessel in Seattle, WA. The three were part of a group of eighteen Chinese smuggled aliens that had been sealed in the container for a period of two weeks. The survivors, who were in dire medical condition, remained in the container with the deceased until their discovery.

**California**—In March 2000, six undocumented aliens were found in the San Diego east county mountains, four of whom died due to hypothermia. The smugglers abandoned the group in the snowy mountains as the aliens pleaded not to be stranded.

**Florida**—In December 2001, a capsized vessel was found in the Florida Straits, known to have been carrying 41 Cuban nationals, including women and children. All are believed to have perished at sea.

**New York**—In June 1993, the Golden Venture, a vessel that had traveled 17,000 miles in 112 days from China, ran aground off the coast of Queens in New York City. The human cargo suffered subhuman living conditions during the voyage with inadequate food and ventilation. Most of the 286 people jumped into the frigid Atlantic Ocean, 10 of whom drowned.

**Arizona**—In 2002, 133 deaths were recorded relating to alien smuggling loads in the Arizona deserts. The ICE Phoenix Special-Agent-in-Charge is currently involved in an investigation in which as many as 13 homicides have been attributed to alien smuggling. Several of the deceased were undocumented aliens who were unable to pay their smuggling fees. Local law enforcement agencies attribute most of the increase of violent crime, hostage taking, and home invasions in Arizona as being related to alien smuggling.

As you can see, alien smuggling is not confined to any geographic region; it is a problem of national scope, which requires a coordinated national response. BICE is developing a foreign and domestic strategy, which includes the implementation of critical incident response teams. The purpose of these investigative teams is simple and effective: begin the investigation of a critical incident as quickly as possible, assembling the broad spectrum of technical and subject matter expertise that is needed to solve complex investigations.

The teams will consist of Special Agents drawn from BICE assets who possess specialized skills in the full constellation of investigative techniques; language and cultural skills, land, air and maritime smuggling, crime scene management, technical operations and forensics. This investigative response will be coordinated at a proposed BICE Smuggling Coordination Center utilizing resources and equipment deployed in key geographic areas nationwide.

In recent years there has been a surge in smugglers trying to smuggle juveniles into the United States. This increase is driven by the demand created by U.S. citizens wanting to illegally adopt children from abroad, immigrants attempting to reunite their families, and child exploitation. Mexican consulates in Southern Arizona alone handled more than 1,500 repatriations of unaccompanied Mexican juveniles during the first half of 2002.

In contrast to the smuggling of family members, trafficked children are often lured by promises of education, a new skill or a good job; other children are kidnapped outright, taken from their home villages or towns and then bought and sold as commodities. Attracted by enormous profits and minimal risks, criminal organizations at all levels of sophistication are involved in the trafficking of children as human cargo across international borders for sexual exploitation and forced labor. The fall of communism, coupled with the deteriorating third world economies, has fueled the dramatic rise of this heinous form of commerce.

International organized crime groups such as the Chinese Triads; Japanese Yakuza; Russian, Albanian, Georgian, Ukrainian, Polish, Nigerian, and Thai criminal networks have also capitalized on weak economies; corruption, and improved international transportation infrastructure in order to facilitate the smuggling and trafficking of some 700,000 to 2,000,000 people globally each year. These organizations have abandoned their historic ethnic alliances to join together in criminal enterprises and to hinder U.S. Government law enforcement efforts.

The national and international enforcement environment changed significantly after the September 11 attacks. BICE places a significant emphasis on targeting alien smuggling organizations that present threats to national security. This emphasis recognizes that terrorists and their associates are likely to align themselves with specific alien smuggling networks to obtain undetected entry into the United States. In addition to the emerging terrorist threat, three factors have created an environment in which terrorists and smuggling enterprises may combine their criminal efforts to pose a significant national and international threat. These factors are:

- 1) The involved criminal organizations growing volume and sophistication,
- 2) Their ability to exploit public corruption; and,
- 3) Lax immigration controls in source and transit countries.

As in our war on terrorism, the most effective means of addressing these issues is by attacking the problem in source and transit countries thereby preventing entry into the United States. Consequently, BICE is developing a strategy that will address alien smuggling and human trafficking at the national and international levels. The overarching Anti-Smuggling/Human Trafficking Strategy requires intelligence-driven investigations against major violators, specifically targeting organizations with ties to countries that support terrorist organizations such as Al Qaeda.

We look forward to working with this Committee in our efforts to save lives and secure our national interests. I hope my remarks today have been informative and helpful to each of you in understanding the complexity surrounding these issues. I thank you for inviting me to testify and I will be glad to answer any questions you may have at this time.

Mr. HOSTETTLER. The Chair now recognizes Mr. Nuñez for your testimony.

**STATEMENT OF PETER K. NUNEZ, FORMER U.S. ATTORNEY,  
SAN DIEGO, CA**

Mr. NUÑEZ. Mr. Chairman, Ranking Member Jackson Lee and other Members of the Committee, thank you for asking me to appear today. I am going to supplement the written statement that you already have in front of you with some remarks some of which I think are responsive to issues that have already been raised.

I guess the place I would like to start is to recognize reality. The world is currently about 6.2 billion people, two-thirds or three-quarters of whom live in the developing world, many of whom would love to come to the United States. It is not just Mexico we are talking about, although Mexico, obviously, is the gateway and the single-biggest contributor of immigrants to the United States. So when we start thinking about solutions, we have to look at this

big picture that we are faced with, an ongoing, demographic onslaught from everywhere in the world, and we are one of the target countries, one of the preferred places for people to come to improve themselves. So whatever solutions we think of have to have that reality in mind.

Secondly, we already have, if not the—certainly one of the most generous legal immigration policies in the world. We admit, and have admitted for every year for the last decade, a million people legally. That should be more than adequate to supply whatever needs our employers have. If not, there are provisions in the current immigration law for people to import labor if they can demonstrate the need. But instead, what many people do, the unscrupulous employers, is take advantage of illegal immigrants who are here by the millions, 8 million at the last count, probably more than that, from all over the world. And the reason why people prefer illegal immigrant workers is that they can exploit them. So we have to also keep in mind that we don't need illegal immigrants. That to me is absurd that someone would suggest we need illegal immigrants. If we need immigrants, if we need labor, then that is the purpose for which Congress has put in place an immigration policy, to handle legitimate needs for employers. But we should not mix the two up, legal and illegal immigration.

Two things, basically two different parts of this formula. One is border control and certainly we must do better at that. We have made some improvements since the early 90's, and that certainly is a step in the right direction. It is a shame that we stopped increasing the Border Patrol in the late 90's. I don't know how many people it would take. I know Mr. King, I think, mentioned the number 20,000 Border Patrol agents, I don't know how many it would take. I don't think anybody knows at this point, but we know it takes more than that. So my suggestion is let's continue to build up the Border Patrol to the point where they can close the gaps, especially the places where people are in the most jeopardy. Let's extend Gatekeeper, let's extend Hold the Line, let's extend the Rio Grande project with more Border Patrolmen. Now, that is going to take time.

So the question in the short run is, is there some other remedy that we should undertake or look at in the short run? Use of the military, is that something that should be considered in the short run if we want to stop death? If that is the highest priority, it seems to me that is something that should be considered.

You know, we now have more FBI agents than we have Border Patrol agents. So I don't know, again, Mr. King, what number, what the magic number is either, but it seems to me whatever the number is required to do the job, that is the number we should aim at.

And as a former prosecutor, I have dealt with all kinds of cases similar to the ones that have been described here today. The issue of what reward or what incentive should be given to people who assist is always a touchy one. I guess I should say that we should not expect that offering some sort of immunity or amnesty to people who inform on smugglers is going to end alien smuggling. I mean, we still have drug smugglers, we still have bank robberies, we still have people committing all kinds of other crimes, and we

have a number of incentives available in those other areas of the law to promote or to incentivize people to come forward to help. This is a big money deal. It is big for everyone on all sides of the issue. So while we certainly should look at ways to improve the prosecution and investigation of these offenses, I don't think we should be so optimistic that we think that is going to stop or smash these alien smuggling rings. We haven't stopped drug traffickers by using some of these same devices.

Thank you.

Mr. HOSTETTLER. Thank you Mr. Nuñez.

[The prepared statement of Mr. Nuñez follows:]

PREPARED STATEMENT OF PETER K. NUÑEZ

Thank you for inviting me to testify concerning "The Deadly Consequences of Illegal Alien Smuggling." The tragic deaths involving the truck in Victoria, Texas, last month once again demonstrate the deadly consequences arising from the complete failure of our current immigration policy to deal with the chaos along our borders resulting from illegal immigration.

My perspective on this issue is based on my experience over the past thirty years, first as a federal prosecutor in the U.S. Attorneys Office in San Diego, California, from 1972 to 1988, then as the Assistant Secretary for Enforcement at the Treasury Department from 1990 to 1993, and as a person who has lived on the border for most of the past 40 years. I currently serve as a lecturer in the Political Science Department at the University of San Diego, where I teach courses in Transnational Crime and Terrorism, American Criminal Justice, and the Politics of Immigration Policy. Finally, I have been affiliated with a number of immigration reform organizations, and currently serve as the chairman of the board of directors for the Center for Immigration Studies here in Washington, D.C.

Unfortunately, deaths along the border related to illegal alien smuggling are not a new phenomenon. It was not at all unusual for people to die trying to enter this country along our southern border during the sixteen years I served as a federal prosecutor in San Diego. Deaths due to exposure to the elements, to traffic accidents, and to the inhumane treatment received from smugglers were all too common even during the '70's and '80's. It has always been a matter of the highest priority for both the Border Patrol and the U.S. Attorneys offices along the border to investigate and prosecute cases where a death was involved. And I am aware of the extraordinary efforts that have been made over the past ten years—since the inception of Operation Gatekeeper in San Diego and Hold the Line in El Paso—by agencies of both the United States and Mexican governments, to warn would-be illegal aliens of the potential dangers they faced in trying to cross the border illegally through the deserts and mountains.

Notwithstanding these efforts, deaths have continued to occur, and will continue as long as we fail to control our borders and as long as we cling to an outdated, failed, and disastrous immigration policy. Because if we try to find the cause of these deaths, and if we are trying to prevent them, then we need look no further than to the unwillingness of the United States to reform its immigration laws in light of the realities of the 21st Century.

Clearly criminal responsibility for these deaths can be laid at the feet of the smugglers who left these poor people to die in the back of a truck. It can also be argued that the illegal aliens themselves are partly responsible for their own deaths, given their willingness to risk harm by entering this country illegally, in violation of our criminal laws. But the illegal aliens who attempt to enter this country by putting their lives at risk, and the smugglers who feed off the desperation of these people, are all reacting to a set of circumstances that act as both "push" and "pull" factors in stimulating the flow of immigrants from Mexico and the Third World to the United States. The plain fact is that the huge disparity in economic conditions between Mexico and the United States, as well as the abundant social services available to immigrants once they arrive here, will compel people to attempt the journey even in the face of danger and hardship.

So until Mexico is willing and able to deal with the "push" factors that force millions of its citizens to seek a better life in the United States, and until the United States is willing to deal with the "pull" factors that lure millions of poor people here from around the world, we should expect that deaths among immigrants will continue to occur. These deaths are not "caused" by law enforcement or by efforts such

as Gatekeeper and Hold the Line; the Border Patrol and the INS have been the scapegoats, told to enforce the law, but not given the resources needed to do the job correctly. What we need to do, at least along the border, is to expand Gatekeeper and Hold the Line to those trouble spots that now represent the biggest threats of illegal entry. Just as the Border Patrol was doubled in size during the early and mid-'90's to provide the resources needed in San Diego and El Paso, now we must add however many more Border Patrol agents are needed to close the remaining gaps.

But "border control" alone will never be enough. What is needed is a comprehensive reform of our immigration policy designed to eliminate all of the perverse incentives that continue to draw illegal aliens to this country. If it is true that most immigrants—both legal and illegal—come to this country to work, then it is essential to finally enact an employer sanctions provision that works. Equally important, however, is the need to reestablish an effective interior enforcement mechanism designed to locate, arrest, and deport the 8 million-plus illegal aliens now living in the United States. For nothing works as a better incentive for illegal aliens than the fact that they know that no one will bother them if they are able to reach the interior of the United States.

Beginning in the late 1980's, INS began retreating from their historical and statutory mandate to locate, arrest, and deport those illegal aliens who managed to evade the Border Patrol or INS inspectors at our ports of entry, and those non-immigrants who originally entered legally but who overstayed their visas. This abdication of the interior enforcement function escalated during the '90's, and has all but disappeared in the current environment. Only the horrors of 9/11 have resulted in any effective interior enforcement, and that is aimed solely at potential terrorists.

In fact, while the latest INS figures show a 75% increase in the deportation of Arabs and Muslims (FY 2002 compared to FY 2001), the same figures show an OVERALL DECREASE of 16% in the total number of deportations. In FY 2002, 28,833 fewer deportations took place than the preceding year; the biggest decline was among Mexicans, the single largest national group, which saw a decline of 32,692 illegal alien Mexicans.

So if you were a poor Mexican living in Mexico, you would know that your chances of being caught crossing the border would be slight, and even if you were caught, nothing bad would happen to you. There would be no prosecution, and no other meaningful sanction to dissuade you from attempting to enter illegally. And you would also know that once you made it past the Border Patrol, you would essentially be home free, that no one would be looking for you after you arrived at your destination in the interior of the United States. And you would know that there would be jobs available for you, even if you might be cheated by your employer, that there would be some level of free medical care for you and your family, free public education for your children, and perhaps even some additional benefits for you and yours, all at the expense of the American taxpayer.

Some states are also offering additional benefits for illegal aliens. To make it easier for you to survive once you are here, some states will allow you to get a genuine government ID card in the form of a drivers license, which you can then use to obtain other indicia of legality that will allow you to burrow deeper into the fabric of America.

And to make sure that you aren't bothered, various state and local governments have adopted policies that prevent state and local police from participating in the effort to locate, arrest, and deport these criminals, or of even cooperating with INS and the Border Patrol.

And in order to help American banks to make a profit, the Treasury Department has authorized financial institutions to accept as valid proof of identity documents such as the matricula consular, which will enable illegal aliens to open bank accounts so they can more conveniently send home to Mexico their share of the roughly \$10 Billion in remittances that flows south every year, which, indeed, explains the zeal with which the Mexican government endorses and encourages its citizens to break our laws by sneaking across the border illegally.

And what to make of the various other agencies of the federal government that act in ways to make enforcement of our immigration laws more difficult, that act in ways designed to subvert the responsibilities of those assigned the task of enforcing our immigration laws. We already know about the disconnects that exist(ed?) between the State Department, the FBI, the CIA, and INS prior to 9/11 that prevented INS from even attempting to do its job properly. But what about the more mundane business of the federal government, where the Social Security Administration does nothing about the bogus-on-its-face information it receives from employers demonstrating phony social security account numbers, the failure of IRS and the Labor Department to lift a finger to share information with INS that could be used

to identify illegal aliens and lead to their arrest and removal. How many federal governments do we have? Why are not all agencies of the government cooperating to assist INS in performing its duty, all of which makes it infinitely easier for illegal aliens to avoid detection and remain here for decades?

And we need to stop the talk of a coming amnesty, or of a guest worker program, both of which, by themselves, serve to encourage additional illegal immigration. What kind of message are we sending when we dangle that possibility before people desperate enough to put their lives at risk? Doesn't this kind of talk also indicate that we really don't care much about law breaking, that we don't really care that much about the rule of law that these immigration laws exist only as a token objection to the violation of our sovereignty?

And finally, if you are able to avoid detection long enough, your children will be allowed to enter a state college or university and pay in-state tuition, unlike other law-abiding American citizens from out of state who must pay a significantly higher amount.

Soon after 9/11, Attorney General Ashcroft quite appropriately suggested that he wanted the state and local law enforcement communities to assist the federal government in locating suspected terrorists, all of whom, almost by definition, are here as immigrants or non-immigrant guests. Somehow, then, we expect state and local law enforcement to be able to distinguish between illegal aliens who might be terrorists and illegal aliens who are only criminals because they broke some other American law. At about the same time, the federal law enforcement agencies began to round up illegal aliens who were from the Middle East or who were Arabs, but not those from anywhere else in the world. Law enforcement also began to locate, arrest, and deport illegal aliens if they worked at airports or other high security locations, but not of they worked in some other sector of the economy. We also became concerned about those illegal aliens that worked at our military bases, such as the U.S. Navy Submarine Base in San Diego, but not those working outside the base. We even arrested and deported those illegal aliens who had the misfortune of working as limo drivers for the NFL Super Bowl held in San Diego this past January. But all other illegal aliens—most of the 8 million-plus who are here—have nothing to fear, because no one cares that they are here, and no one is doing anything about it. If that is not an incentive for illegal immigration, nothing is.

One last point about deaths relating to illegal immigration. We should be as concerned about the deaths (and other violent crimes) caused by illegal aliens as we are about the deaths of illegal aliens that occur during the course of their own volitional acts of illegally entering this country.

On June 13 of this year, Oceanside Police Department officer Tony Zeppetella, age 27, was gunned down and executed by one Adrian Camacho, described as "an Oceanside gang member with a history of violence and drugs." (San Diego Union-Tribune, June 20, 2003) What the news article does not report is that the defendant has been convicted on numerous felonies, and has previously been deported as an illegal alien! Too bad the Oceanside Police Department and the San Diego County Sheriff's Office were not interested in illegal aliens. Too bad that the INS in San Diego does not have an effective program designed to locate, arrest, and deport illegal aliens. Maybe if they did, Officer Zeppetella's widow and six-month-old child would not be suffering today over their loss.

Or take the recent case from Northern California involving the kidnapping (and who knows what else) of a 9-year-old girl, who, thankfully, survived her ordeal. Her kidnapper? Another illegal alien, who was able to hide in plain sight, due in part to the policy of the San Jose Police Department to look the other way with regard to immigration violators. And of course the INS has no program to fulfill its statutory duty to locate, arrest, and deport illegal aliens.

So as we mourn the deaths of those who voluntarily decided to break our criminal law by entering this country illegally, let's also save a little compassion for those who become the victims of illegal aliens, with the full complicity of the federal government and state and local law enforcement agencies that have decided to look the other way.

The bottom line is that this Congress has to end the chaos of our past and present immigration policy, and put in place serious reform efforts that will enhance the ability of the new INS to do its job. We must, as a country, stop sending a mixed message to the downtrodden of the world that we will leave you alone if you have the courage and the ingenuity to make it past our borders. The federal government must use all of its resources to attack this problem comprehensively. The state and local governments must be brought into the effort, and any and all incentives dangled by state and local governments must be ended. Only by turning off the magnets that provoke this lawlessness can we ever stop the chaos at the borders that results, unfortunately, in the loss of life.

Mr. HOSTETTLER. Ms. Jimenez.

**STATEMENT OF MARIA JIMENEZ, CHAIR, MAYOR'S ADVISORY  
COMMITTEE FOR THE OFFICE OF IMMIGRANT AND REF-  
UGEE AFFAIRS, CITY OF HOUSTON, TX**

Ms. JIMENEZ. I would thank the Committee for the opportunity to address you, and particularly Congresswoman Sheila Jackson Lee, who made an effort that we be here to articulate the perspectives of immigrant communities in the United States and the problem of commercial enterprises that are contracted in order to enter this country without Government authorization.

As I have stated in the written testimony, immigrant communities throughout this country are very well aware of the risks of crossing the border. Death has been part of the experience throughout decades in the journey to the United States. It was part of what the Irish experienced, it was part of what is experienced in the Caribbean, and it is part of what people experience crossing the U.S.-Mexico border. They have become more numerous as it has become more difficult to enter legally, and as well as fortification has made necessary the use of smugglers, where 10 years ago—and those are studies by Douglas Massey at the University of Pennsylvania—10 years ago, persons walked in alone. Now, given the fortification of the border, this has consolidated multinational, multi-billion business operations to have people come into the country.

The house that we saw, it is very common in immigrant communities. We know of them. We know of the people who, when persons reach their destination, are quickly let call the relatives, and then people are freed within a matter of hours as they pay the sums required by the smugglers. Occasionally, there are those who kidnap and engage in other activities. But it is usually, again, known throughout the community and those type of enterprises are no longer accessed.

The different risks involved in these operations are well known in immigrant communities. Immigrant communities also know where to access people who can cross a person safely into the United States. The fact that we have millions of people who have done so are testimony to that. The recent study by the University of Houston in which Salvadoran immigrants were questioned, for instance, showed that in order to cross women, who are not authorized by the government to cross, Salvadoran families access known people who engaged in these enterprises who guarantee safety for women as they cross the border.

So one of the things that I think you have to understand is that, from the immigrant perspective, these type of enterprises are a necessary evil given the limited options of crossing legally into the United States. I often refer to my own personal experience, my grandfather when he crossed in 1912, went to the bridge and in the State of Coahuila, simply paid a nickel in crossing over. He crossed legally. My father sits watching television and he says, "I don't understand it." he said, "Why don't people—the United States Government just require that people pay \$1,000. It would go to the U.S. Treasury instead of going to the smugglers." that is, there is a real essence here in understanding that people know of these commercial operations, access them, and understand the risks that

are undertaken. But the risks that people know of are minimum to the need to migrate and to search for the well-being of themselves and their family.

Now, we believe that the human costs of migration can be reduced by expanding and making more flexible avenues for legal migration. In no means are we calling for open borders. We understand, as international law so describes, that nations have the sovereign right to determine who enters and stays and under what conditions people are made members of a society. But we believe that, especially in the relationship to Mexico, there is a very true need to look at ways that people can migrate legally, and that is a matter that will definitely put a tremendous dent on these operations and the need for people to access them.

We also believe, in our experience, that the human cost of migration can be reduced by developing provisions to encourage persons to come forward. I gave a specific example, 2 years ago. I had a family, three members from a small town in Mexico had died in a railroad car near Victoria, TX. And I went to the apartment house where the family member lived, where many of the townspeople lived, and no one wanted to come forward, simply because the person who brought them over belonged to the town, and people were unwilling to risk their safety in order to turn this person in. So how can we provide mechanisms that will provide an incentive and at the same time be able to ask people to come forward, and hold accountable those commercial enterprises that do not deliver the services as contracted, as understood by the community.

The human cost also of these illicit commercial enterprises can be reduced by increasing public education as to the penalties, especially the fact that people can receive the death penalty when these operations go wrong. I think that many—in the case of immigrant communities, many people have been doing this for decades. And many, as I have stated in the example before, are from small towns. So there isn't an understanding that there are serious liabilities. And this may also dissuade people from engaging in them in terms of entering into the probability of these commercial enterprises.

In sum, this is our testimony, and, again, we thank the Committee. And we hope that this will be the beginning of a dialogue to look at ways that we can bring sense to our immigration policy in making it more congruent with the reality of integrated international economy.

Mr. HOSTETTLER. Thank you, Ms. Jimenez.

[The prepared statement of Ms. Jimenez follows:]

PREPARED STATEMENT OF MARIA D. JIMENEZ

**My name is Maria D. Jimenez. I am currently Chair of the Mayor's Advisory Committee for the Office of Immigrant and Refugee Affairs of the City of Houston.** Houston is the fourth largest city in the nation; twenty-eight percent of its population is foreign-born. I myself am an immigrant from Mexico and a naturalized citizen of this nation for the last thirty-four years. I now live and work in one of the oldest Mexican immigrant neighborhoods in the city.

In my professional life, I have worked with many community-based organizations in documenting human and civil rights violations in the enforcement of immigration law in border areas and other immigrant communities in the last sixteen years. In my current capacity as a human rights consultant, I am working with several non-



profit organizations on establishing human rights training programs for targeted immigrant population groups in Houston, Texas.

Both professionally and personally, I have interacted with immigrant and refugees who have survived and been victimized commercial enterprises that move them across the border without government authorization.

***From these experiences, the following conclusions may be drawn:***

**The risks of crossing the border without documentation are well known in immigrant communities.**

Jesus Galvan first entered the United States from Mexico as a bracero or guest worker in the early 1950's. At the end of this program, he continued crossing, but without documentation to work in agriculture in Arizona and later, in light manufacturing in Los Angeles and Houston. He became a permanent resident during the legalization program authorized by the Immigration Reform and Control Act of 1986. He became a US citizen in 1997.

In the course of his travels to and from his native Colima, he narrates stories of death and injuring in a perilous journey to evade immigration authorities. He talks about the death of a cousin who traveled with him in the late fifties and of the dangers of sleeping night at night in rattlesnake infested fields. He has known of many incidents of bodies spotted on route to destinations of work or settlement. It was no surprise to Mr. Galvan when the University of Houston's Center for Immigration Studies on "Death at the US/Mexico Border" in March of 1997 released its studies of deaths of migrants crossing the US-Mexico border. He, like many others from sending communities in countries in Central America and Mexico, can attest to friends, family members and other migrants dying as they move clandestinely to worksites and hopes of providing a better life for themselves and their families.

He, like many others, can attest to groups being left by "guides" to wander on their own. He, like many others, can attest to family members, friends or neighbors held captive until they paid smugglers for their release. He, like many others, can attest to family members, friends or neighbors who have never again been heard from once they started on route to join family or to seek employment. He, like many others, relate the to numerous incidents of deaths, kidnappings, rapes and other violations of human rights and dignity now frequently reported on the myriad of Spanish-speaking media, and now more frequently, by English-speaking media. It is a phenomenon integral to the clandestine movement of persons across international borders. It is a fact of life for many immigrant communities throughout the United States.

**The networks of persons who can cross persons without government inspections are known and accessed by immigrant communities.**

Persons who transport those unable to enter with government authority are known in immigrant communities in the United States, on the border and in hometowns. Some are relatives or other townspeople. Others are individuals who will provide this service on recommendations of previous customers. Some are offering their services in particular places in border towns. Some are linked to legitimate businesses like immigrant transport companies. Some are tied in to other illicit businesses like the drug trade or organized crime. All have grown, flourished and consolidated as avenues for legal migration reduced due to changes in law and border enforcement resources and strategies increased and received impetus by the policy decisions to stop undocumented migration in the last decade.

Andrea Delgado, a legal immigrant in Houston, heard from others in the neighborhood of a group of coyotes or smugglers in Brownsville that could cross her 42-year-old brother from Hidalgo, Mexico; he was finding it increasingly difficult to support his wife and five children. She contracted their services and told her brother to wait for the contact at the bus station in Matamoros. Her brother called her in Houston as soon as he arrived; he told her he carried the four hundred dollars she had sent him to pay the smugglers.

This was November 1988; to date the Delgado family has made extraordinary efforts to find an answer to their brother's whereabouts both in the United States and in Mexico. They have spent an astonishing amount of time and money to attempt to locate him in the Rio Grande Valley. Throughout the years, they have paid lawyers and investigators who called them to say that reports of their brother/son have been spotted. They have met with numerous laws enforcement officials on both sides of the border and none has taken them seriously, even when they filed complaints containing the addresses of the remaining members of the smuggling ring. In 1993, a few of the leaders of the smuggling operation were jailed for drug trafficking. On many occasions, the family and/or Andrea have been threatened by the smugglers for continuing their search.

Yet many immigrants contract persons who can safely transport family members. Amelia Perez needed her son to be with her after she found stability in selling cosmetic products in Houston. She traveled to the border and made sure the smuggler would be one to transport her son in a vehicle and not walk him through the dry desert lands. She found one that immigrant networks in Houston said was tied into "immigration authorities who looked the other way." Her son arrived safely and now works in a trucking company on the docks of the ship channel.

For many in immigrant communities, the necessity of finding a decent life for themselves and their families, joining family members already in the country and/or escaping political repression makes crossing the border an enterprise that is fundamental to their survival as human beings. Risks and hardships are possible, but in general, most understand that smugglers are businessmen and few expect to come across those that may fail to meet the terms of service as contracted. They have the experience of family, friends and communities that reinforce that most clandestine crossings are safe; the risks are less than the want and suffering at home.

***The factors driving people to migrate in these conditions outweigh known risks and costs in immigrant communities.***

Agapito Jaime is a permanent resident who works on remodeling homes. Many in his hometown now live and work in Houston. In 2000, three young men on their way to join other townspeople died in a locked railroad car near Victoria, Texas, the city of the recent, tragic incident in which 19 immigrants lost their lives. Families of the town were unwilling to cooperate with the police; they knew the smuggler who had locked them in and was responsible for their death and dehydration. They feared coming forward; they feared for their safety and those of the families back home. Others acted to protect the smuggler from prosecution.

No one was ever brought to justice. It simply became another story of the town immigrants. All knew that they must continue to migrate and simply accepted the incident as another story of the townspeople. It is simply explained as a trip that went bad.

***From these experiences, the following recommendations are placed for your consideration:***

**The human costs of migration can be reduced by expanding and making more flexible avenues for legal migration.**

The orderly migration of persons and financial disincentives for clandestine operations can be achieved by expanding and making more flexible laws that ensure legal migration. People would not migrate illegally if they could do so legally. The adoption of measures that coincides with the reality of the movement of people in an ever, interlocking global economy has to be made congruent. An overhaul of our immigration laws to give that congruency is urgently needed. A few important aspects are: (1) a legalization program that can grant permanent residency of those already here without government permission; (2) changing those aspects of current law that impede the adjustment of status creating obstacles to legalization; (3) permitting individual waivers for transgressions; (4) a temporary program for workers that guarantee a workers choice of employer, fair employment protections, labor rights and options of permanent residency; and (5) finally increases in allocation of resources for expediting legal migration and family reunification petitions.

**The human costs of migration can be reduced by developing provisions to encourage persons to come forward and assist in the investigation and prosecution of human commercial smuggling enterprises.**

A safe space for persons who are victims of commercial smuggling operations that endanger lives has to be created by legal measures to protect persons and their families, who come forward with information and/or as witnesses. Working permits leading to permanent residency will increase the stakes for immigrants who otherwise feel that they gain little by not informing authorities of these situations, especially if they know these are tied to larger, criminal activities. Visas to allow families to also join their loved ones and be protected from harm are also important. Working will give the incentive to await the long period required by the investigation and prosecution of those involved in these criminal enterprises.

**The human costs of these illicit commercial enterprises can be reduced by increasing public education of the penalties for death and injury of persons transported by under these circumstances.**

The multi-billion dollar enterprises that profit from the clandestine movement of human beings across international borders must be held accountable for placing persons who have contracted their services in danger. Anyone who engages in these activities must have clear knowledge that actions leading to death or serious injury is unacceptable and that these unlawful actions carry with them serious penal consequences. Many town “guides” to “coyotes” have operated relatively unencumbered by law enforcement consequences for decades. Heavier penalties for the serious injury or death of those in transport need to be publicize to dissuade persons from engaging in crossing human beings illegally and/or placing their lives at risk. Knowing the degree of punishment may dissuade and prevent persons from engaging in this illicit activity or at least, to act more responsibly in carrying through on their services.

**In conclusion, persons take the risk of entering without government authority in the hopes of bettering their lives and those of their families. The choice to move for the opportunity of improving one’s well-being in a stronger economy or a more open society is made by individuals responding to the driving forces of labor needs in an ever, integrating international economy. The shortcomings of current immigration law and policy that create obstacles to an orderly, safe and legal movement of people across international borders to resolve these labor market needs frame the context for increasing, the profitability for international commercial enterprises to move persons clandestinely across borders. In the equation, human life, rights and dignity are subordinated to profit. It is time to take the profit motive out of this illicit activity. It is time to provide legal alternatives of moving across international borders. It is time to reclaim life, dignity and rights for all persons.**

Mr. HOSTETTLER. We now go to a round of questions for 5 minutes. The Chair recognizes himself for 5 minutes.

I would like to begin with you Mr. Nuñez. You make an interesting point near the conclusion of your testimony, and you put this discussion into some context. And as the father of four, this is difficult for me to fathom this, the depth of this tragedy, but even more so the point that you make in that you point out that those that subject themselves and their families to this process, do so voluntarily. And that Mr. Homan made a distinction in his testimony between smuggling and human trafficking, in that human trafficking has elements of force and coercion that is not present, to a great extent, in smuggling. Is that not true? Is that not true that the individuals that put themselves this situation to be smuggled in the manner we saw in the film and in the manner that resulted in the tragedy in Victoria, TX recently, do so voluntarily.

Mr. NÚÑEZ. Absolutely. They are desperate people, obviously. They are driven by various forces or attracted by various forces or both. They want to leave where they are, and they want to come here, but they make that calculation. It is a calculation. I think all of us, in one way or another, have recognized that the risk is known, it is voluntarily undertaken, but the volunteers, they certainly aren’t hoping that something bad will happen to them in the process of it, but, yes, they volunteer, because they realize that if they can get past the border, they are home free. And I think the main point of my testimony is that our immigration policy is so dysfunctional beyond the border because we basically do nothing about the 8 million plus that are already here, everyone in Mexico or Central America, they know that. They know if they can get past the border they are home free. They will get a job, no one is going to bother them. The police won’t look for them. The INS or

the new INS, BICE, there is no real interior enforcement capability. If they are lucky, their kids will get a free education, they will get medical care, they will get public benefits, they will get driver's licenses, they will get college aid, in-State tuition. We have laid out a potpourri of benefits that people in the Third World recognize. So, yes, I will volunteer to take the risk, because I know that the reward is tremendous if I can survive.

Mr. HOSTETTLER. You make another point in your written testimony speaking to the issue once you get here, you are "home free" in your words. You say the following, quote, and we need to stop the talk of a coming amnesty or a guest working program, both of which by themselves serve to encourage additional illegal immigration. What kind of message are we sending when we dangle that possibility before people desperate enough to put their lives at risk, end quote.

Do you effectively equate the result of discussion of amnesty with the result of a discussion of a guest worker program with regard to the attraction of illegal immigration and those willing to put themselves and their families in this risk?

Mr. NUÑEZ. There are some differences. Obviously, amnesty is the brass ring. That is the best benefit you can get. Guest worker, we have a guest worker program now, but nobody wants to use it. The immigration policy, the immigration law in United States provides a number of ways for employers to import workers. Employers don't want to do it because it is easier to hire illegals. So why another guest worker program? We already have guest worker programs for farmers, for any industry.

Mr. HOSTETTLER. Thank you. Agent Garza, is it correct, as some have done, to Blame Border patrol policies for aliens dying while trying to cross the border illegally, in your opinion?

Mr. GARZA. In my opinion, absolutely not. The Border Patrol is like any other law enforcement agency. When we see a problem, we address it. Naturally, when our strategy calls for moving our resources forward and stopping the flow, the alien or the smugglers will move to other areas and in those instances, it is the smugglers, not the Border Patrol agents, that put these people in jeopardy. As far as the risks are concerned, sometimes the aliens must not know the risks, but the smugglers know the risks, and the Border Patrol has been involved in these Border Safety Initiatives since 1998. We are the most proactive agency in addressing the issues of border safety, more than any other agency on either side of the border. We have this public information campaign. Recently, after the tragedy in Victoria, those handbills that we are passing out to the truck drivers, trying to discourage them by educating them as to the consequences of illegal aliens, public service announcements that we have had aired in the Republic of Mexico, Central America. And the Border Safety Initiatives such as the 1-800 numbers, training our people to respond to emergencies and just working, even working with the Mexican Government to raise the awareness every which way that we can think of.

In my sector with the boat patrol, we were one of the first sectors that started patrolling the river 24 hours a day. Our agents are not there in the middle of the river in boats to arrest people. They are there to talk to them on the loud speaker if they are going to enter

illegally or to rescue them they should fall into distress. That is the only time our boat patrol people will try to touch an alien. Because we don't want to cause them any harm. But the Border Patrol is very active in this area. And absolutely not, I don't think the Border Patrol is to blame for these tragedies.

Mr. HOSTETTLER. Thank you, Agent Garza. The Chair now recognizes the gentlelady from Texas, Ms. Jackson Lee, for 5 minutes.

Ms. JACKSON LEE. Thank you, Mr. Chairman. Thank to you all the witnesses who have presented us challenges today that I think we can work together.

Let me raise questions that I hope will work with helping Mr. Garza and Mr. Homan. And Mr. Homan, being part of the investigation, we appreciate the work that was done. That was enormous tragedy. It impacted not only the victims, the immediate victims who lost their lives, but certainly many of their families have legal status here in the United States.

One of the issues that I have come across is the ability to really go after, as you have indicated, the smuggling rings, to really go after these commercial rings for whatever purposes they may be organized. And I notice that your testimony talks about the over-arching, antismuggling-human trafficking strategy requires intelligence-driven investigations against major violators. So you need information; is that not correct?

Mr. HOMAN. Well, under the new agency, ICE brought to bear the new integrated and unique authorities from customs, legacy INS, Federal Protective Service and Air Marine Interdiction. They all have intelligence branches. All those branches are being coordinated, all the information is being shared.

Ms. JACKSON LEE. So you need to receive information that is my question?

Mr. HOMAN. Right.

Ms. JACKSON LEE. If we had legislation that would provide extra incentives to those victims, to help smash the rings, as I think Ms. Jimenez indicated that she went to an apartment, and first it was fear, and then they began to provide information, would that be helpful in your operations if you could get the family members and even the victims to come forward, provide a close contact information right away, would that be helpful?

Mr. HOMAN. Well, in some cases, the family members do come forward now. For instance, in Victoria the Mexican-American community was outraged. Many families came forward through the Mexican—

Ms. JACKSON LEE. But extra incentives, would that help others who may not have been involved in such a terrible tragedy come forward?

Mr. HOMAN. Yes.

Ms. JACKSON LEE. Thank you very much, Mr. Homan. Mr. Garza, I understand that there is a memo from the Department of Justice that indicated that there was a utilization in February of 2002 of some unique technology, AVIAN, I believe it is the Advance Vehicle Integration and Notification, has to do with sensoring the heart beat, it is technology that has come from the Department of Energy, where this equipment would be able to sensor human life inside these large—and I saw the large 18-wheeler, huge, obviously

with no ventilation. Is that the kind of technology are you suggesting in the work that you do at the border? When I say you are suggesting, would additional technology help you? We are looking at technology. I am a Member of the Homeland Security Committee that has been to the northern border. We have been to the southern border, at least I have. And I notice that these are busy borders. These are enormous borders. And so we want to ask the question whether additional resources and technology in your hands, would that help you detect human cargo, would that not be helpful to you?

This indicated that this technology was used in an experimental fashion on February 7th and 8th in 2002. It may not have come to your attention, but it has to do with being able to use this sensor equipment without even opening the cargo, but being able to do so on the basis of suspiciousness.

Mr. GARZA. Thank you, Ms. Jackson Lee. And absolutely, that technology would help us. I am not familiar with this particular technology that you are talking about. At our checkpoints, we are pressed with high volumes of traffic. We have about 15 seconds per vehicle. That is always a concern about how much time you take to look at a vehicle. On top of that, we have to comply with the laws of search and seizure. As you know, our check points are not equivalent of the border. So we have to do things according to the rules. Since the tragedy, and now that we are the Bureau of Customs and Border Protection, the McAllen Border Patrol Sector has been using vehicle cargo inspection machines, x-ray machines that the Customs Agency Service was using at the ports of entry.

Ms. JACKSON LEE. So the greater technology would help you? The only reason I am asking you that question is it would help? New resources?

Mr. GARZA. No question about it, Congresswoman Lee.

Ms. JACKSON LEE. Let me ask you on the issue of incentives for those that would help provide with you information. Because you are the law enforcement, you are on the ground, even though you are at the border, but you provide information as well, would that not provide you a greater opportunity to get this information, help smash those rings?

Mr. GARZA. Yes.

Ms. JACKSON LEE. Let me just to Ms. Jimenez, Mr. Chairman, if I may. The days after the tragedy dealing with Victoria, and you have seen many tragedies, and we appreciate the leadership have you given to the City of Houston as the Chairman of the City of Houston Advisory Committee on Immigration and Refugees, in seeing that, what is the key that you gleaned from these individuals coming across the border? And the vulnerabilities that they may face? How many families did have you to deal with who suffered a great loss because of the tragedy that occurred to their family members?

Ms. JIMENEZ. In these particular cases, we deal with them on almost a daily basis. They are not new to immigrant communities. This one was very tragic because so many families were involved. I would like to just put in perspective the situation of the well-being and the responsibility that we do have as a society toward ensuring that people's lives are protected. I hear that, well, it was

people, it was their choice to engage in this activity. We can say the same of teenagers who are involved in car accidents, or we can say the same of women who choose to be in abusive relationships with their spouses. Nonetheless, as a society and the United States Constitution, we search for the well-being of persons within our borders. And the 14th amendment guarantees those protections to all persons. And so in that sense, I did want to put that in perspective. And in dealing with these tragedies on a daily basis because we do so and have done so over many, many years, families, you know, it was a bad trip. It is a commercial enterprise. It is a necessity to contract these services so that is what people say. It was simply a bad trip. They do want the person held accountable.

The only way I can relate it to you is when a business operation, for instance, restaurants doesn't put its food at the right temperature and all the people in the restaurant become sick and maybe some even die, there is a call for accountability of that business person, there is a call for accountability within the community for those people, but that doesn't mean people won't go back to the restaurant, doesn't mean people won't engage with another person hoping that this time this trip will be a safe one. And I can't stress this, that is why I congratulate Mr. Flake and his colleagues for the bill that they have developed because I think it recognizes the reality, that integrated relationship, in terms of labor markets in Mexico, in the United States and Canada, at least in the three countries.

And the families, like all families in such situations, do go through the suffering that any human being does when there is a loss of life. But the family will recuperate and others will come.

Ms. JACKSON LEE. You think that financial incentives or incentives would help give families more opportunity and encouragement to give information, smash these rings?

Ms. JIMENEZ. I believe that they will help more than the financial incentives, I believe that the incentives are with respect to the ability to make a living legally, as they a—

Ms. JACKSON LEE. Access legalization.

Ms. JIMENEZ. As they wait the—because they are long trials. They have to work. This is one of the problems that is happening with the survivors of the Victoria, increasingly they want to work. That is why they came, they have a need to support families back home and families here, some of them lived here. And then the other issue, of course, is simply how to deal with other people. One of the recent cases in Houston, maybe 2 weeks ago, was a safe house in my own neighborhood a few blocks from where I live, in which the 29 people who were freed from that particular safe house are now in quarantine because they had chicken pox. So now, these people are frozen in terms of their ability to earn a living and at the same time to be able to be useful as witnesses for the Government.

Ms. JACKSON LEE. I thank the Chair for indulging me. That is the same legislation that we have dealing about earning access to legalization that I am writing as well.

Mr. HOSTETTLER. I thank the gentlelady. The Chair now recognizes the gentleman from Arizona for 5 minutes, Mr. Flake.

Mr. FLAKE. Thank the Chair. Thank the witnesses. Mr. Homan and Mr. Garza, whoever is first on this, when someone is caught coming across the border, they are taken and their identification is taken down through the Ident system, as I understand it. With the average person that is caught, how many times have they tried previously to come across? I am told that there are records of some who have tried dozens and dozens of times who are apprehended sometimes and how many times are they caught and simply taken back across as opposed to actually prosecuted?

Mr. GARZA. Thank you, Mr. Flake. It depends on the situation. I cannot give you an answer as three times or four times or five times. It would depend on the situation and the particular sector that you are operating in. If it is an aggravated case, somebody who has been a difficult person to apprehend, he could be set up for a prosecution or a deportation. Sometimes it is you just catch somebody, he is just an illegal entrant, he hasn't entered in 2 years or a year, and he enters again or a span of time maybe five times, we will set him up for a prosecution or even a deportation hearing. But I can't give you a specific answer, sir.

Mr. FLAKE. If you looked at your sector and looked at the records on the average, how many times would each person have been apprehended?

Mr. GARZA. I would say probably about six times.

Mr. FLAKE. Mr. Homan, are there any figures on—I know we have figure on number of apprehensions per day and per month in each sector, and we run those against what happened last year and what not, what kind of figures or estimate do we have about the number of apprehensions, as opposed to number of successful entries if you will, for every person apprehended? How many people come across and are not apprehended in some of the sectors you are familiar with?

Mr. HOMAN. I would have to refer that question to Chief Garza because they track the number of border crossings.

Mr. FLAKE. Mr. Garza.

Mr. GARZA. I am sorry, Mr. Flake, would you repeat the question?

Mr. FLAKE. For every person that is apprehended, what are the figures on the people that cross successfully or are not apprehended, for every person are there two people that come across successfully or is it .5, .25? Mr. Garza, I know you can't be precise. I know there are some figures out there.

Mr. GARZA. Yes, sir. That is almost an impossible question to respond to because not all our border is under control. In areas where the border is under control or where we think we have an acceptable level of control, such as in Brownsville, TX, where we have the human resources and the technology, and we patrol on a routine basis and check for tracks at the known crossings and things like that, I could probably say 92 percent. But there are isolated areas such as the west part of my sector, Rio Grande City, and up in those areas where we are not totally staffed that I could never tell you how many are getting away from us. It is a very, very difficult question, and all I could ever do is give you an educated guess.



Mr. FLAKE. In your opinion, Mr. Homan's as well, would it be useful to have a relief valve of some type, where individual workers who want to come across, willing workers to come across and then return home, where they are getting legal entry, there is a legal framework for them, would it make life easier for you actually targeting those who want to come across extralegally or outside of the system?

Mr. GARZA. Are you asking about a guest working program, sir?

Mr. FLAKE. Yes.

Mr. GARZA. We already have a system by which people can enter the country such as tobacco farmers, and some of the States I understand that they import foreign labor and things like that. I think—I don't know exactly. I think the difficult thing would be to know how many of these people are you going to let in. But of course it would always be good if you knew who was entering. That is the problem for illegal immigration, you don't know these people who are entering.

Mr. FLAKE. Mr. Nuñez, you don't draw much distinction between an amnesty and guest working program. I happen to think there is a quite good distinction. If you have, as myself and my colleagues are proposing, a temporary worker program where those who are here illegally at present are disadvantaged, assuming their ultimate goal is to become a citizen of this country, are disadvantaged relative to those who apply for a similar permit from their home country, be it Mexico or Guatemala or elsewhere, is that not an incentive to actually return home or not to cross illegally if it is a disadvantage to be here illegally in terms of signing up for a guest worker program?

Mr. NUÑEZ. Well, I don't think an employer looks at it that way. I think many employers want illegal workers. They don't want guest workers because then they have to play by the rules. And many employers don't want to play by the rules. They want to underpay, mistreat, abuse the workers. So the guest worker program will not appeal to at least that group of employers.

Mr. FLAKE. I would submit, just my time remaining, I would submit that that is say very—there are certainly those, but that is a small group. My experience has been that employers out there are in legal no man's land. They are required to take some identification to ensure that the person is here legally. But they can't ask twice or they can't ask for too much for fear of being sued. It has been my experience that employers want to play within the rules. They would love to, but it is a very difficult thing right now.

Mr. NUÑEZ. If they wanted to play within the rules, they could apply to bring in workers legally. The law currently allows any employer to do this.

Mr. FLAKE. With all due respect, we do have some of those programs, H-2-Bs, and some are specific to agriculture or high tech industry. We don't have a large, comprehensive, portable guest worker program.

Mr. NUÑEZ. Then the solution would be to expand the, expand the existing—

Mr. FLAKE. Or create a new categories.

Mr. NUÑEZ. If you need new categories, but not just open the door.

Mr. FLAKE. Thank you.

Mr. HOSTETTLER. Thank the gentleman from Arizona.

The Chair now recognizes the gentleman from Iowa, Mr. King, for 5 minutes.

Mr. KING. Thank you, Mr. Chairman. Again, I thank the panel for your testimony. This has been interesting to listen here today.

I direct my first question to Mr. Homan. First I want to thank you for bringing the documentary on the immigrant smuggling that is actually—seeing it makes a difference, so we can see how that is done.

As I sit here and listen to this, it reminds me of the Kunta Kinte, the series Roots. People are packed in, when they get out, they can barely walk. So now slave ships from the south is how I would describe it, in the form of pickup trucks and people packed in like sardines. You testified that human smuggling worldwide was about a \$9.5 billion industry. Do you know how much of that is related to the United States itself, of that 9.57 billion?

Mr. HOMAN. No. I do not. A vast majority.

Mr. KING. Really. So that would mean certainly over half. So is it, could be conceivably \$4 and a half to \$5 and a half, even more, billion?

Mr. HOMAN. I wouldn't have the exact figures. Smuggling occurs globally in all countries, but the United States is by far the most popular destination for smuggled aliens and organizations.

Mr. KING. Would that be a number that could you provide to this Committee?

Mr. HOMAN. I could get back to you on that. I would have to check on that.

Mr. KING. I would think if that is a quantifiable number, it would be broken down Nation to Nation or at least by hemisphere. I would be very interested in that and ask you to do that. Then the numbers that you have given us, and I see the difference between 17 and 19, two died later in that particular incident, do you have an estimate of the annual deaths due to human smuggling coming into the United States?

Mr. HOMAN. Approximately 200 to 300 per year annually. I believe Chief Garza in discussions with him yesterday has the exact figure for the last couple fiscal years.

Mr. KING. Two hundred to 300 is in the region. Then I don't see Mr. Smith here, but I would credit this to him. As he pointed out in previous hearings, 20 percent of our prisons are populated by illegal aliens. Would you have any idea how many American citizens are murdered on an annual basis by an undocumented or illegal aliens?

Mr. HOMAN. I do not have the exact figures, but I can say that criminal aliens pose a great risk to the citizens of this country.

Mr. KING. The equation of how many are seeking to enter this country illegally versus how many citizens murdered by those illegals is a legitimate evaluation of our policy.

Mr. HOMAN. Yes, sir.

Mr. KING. Thank you very much, Mr. Homan.

Mr. Garza, yours was also very interesting testimony. And the way you have utilized resources there in showing the positive results. I particularly appreciate the technology and the methods you

have and also the tone that you presented this with. The fact that you are not there necessarily to apprehend but to warn and to take care of people. I think Mr. Flake may have asked this question a little bit differently, but if we provided those resources and you the authority for the entire southern border, by what percentage illegal border crossings do you think would be reduced?

Mr. GARZA. That is a very difficult question. The border is very long. We are responsible for the northern border and southern border. In my area, the areas that I have under control, I can tell you with some sense of certainty that places like Brownsville, TX, we could have about 90 percent effectiveness with the resources that we have there. But to try to establish that type of control throughout the Mexican border would be something very, very difficult. Regardless, I think somebody would crack through the line, even if we had that many resources.

Mr. KING. Thank you very much. Mr. Nuñez, as I listen to your testimony, it struck me that you might be the person to ask this question. That is if we continue on the current policy, what does America look like to you at 25 and 50 years down the road?

Mr. NUÑEZ. Well, you look at the census projections and again depending on what you want America to look like, we are rapidly growing past all of the initial projections that the census and demographers predicted back in 1970. So the impact on air quality, water quality, you know, environmental issues, how many people live in a certain area, I mean those—most people don't want to live in a congested befouled environment. So I am very concerned. Even at the number of legal immigrants we are allowing in, I think it is way past what is in the national interest at this time in our evolution as a country. It is the highest sustained immigration in the history of the country. We are not building transcontinental railroads, we are not trying to settle the Middle West or fill up the western half of the country, so I see no rational interest in what we are currently doing.

And I think you can clearly make the case that the more legal immigration you have, the more illegal immigration results from that because people who come always leave somebody behind. And not everybody can come legally, every year, so whoever is left behind, now they have got an anchor in the U.S. somewhere, so it just promotes more immigration. And it just never stops. So we are clearly headed, I think, in the wrong direction, and the America that I see down the road is an overcrowded, unpleasant place to be.

Mr. KING. Thank you. Thank you, Mr. Chairman.

Mr. HOSTETTLER. Thank the gentleman from Iowa.

The Chair now recognizes the gentleman from California, Mr. Gallegly, for 5 minutes.

Mr. GALLEGLY. Thank you, Mr. Chairman.

I really appreciated the testimony of each of the witnesses. I find it very interesting.

Ms. Jimenez, you have focused a great deal on an issue that is a concern to everyone and that is the safety of people that are illegally crossing the border; is that correct? That has been a major concern of yours for a long time?

Ms. JIMENEZ. Yes. It has.

Mr. GALLEGLY. Would you—

Ms. JIMENEZ. Yes, that has been a major concern. It was our work that asked the University of Houston to do the first study of death at the border.

Mr. GALLEGLY. Would you say then that your concern has been to look out for the safety of those that have illegally crossed, illegal crossings and the all the potential danger involved in that would it be safe to say that have you been one of those campaigning aggressively to encourage people not to illegally cross the border?

Ms. JIMENEZ. That I—none of us want to cross without Government authorization. If people had an alternative—

Mr. GALLEGLY. Have you been aggressively outspoken in discouraging people from trying to come into the country illegally?

Ms. JIMENEZ. I think that anyone in the immigrant community understands, and I myself understand, of the great dangers of crossing—

Mr. GALLEGLY. Would you—

Ms. JIMENEZ.—without documentation.

Mr. GALLEGLY. Would you—

Ms. JIMENEZ. I don't think anyone, willingly, wants to contract a smuggler, cross borders, deserts, mountains—

Mr. GALLEGLY. Ms.—Ms.—

Ms. JIMENEZ.—die in the desert or pack in the back of a trailer.

Mr. GALLEGLY. Ms. Jimenez, would you say that the fact that we have, as we know, millions of people that are in this country illegally, and there is a notion out there, I think as evidenced by the witnesses and general knowledge, that the overwhelming majority of the people that once they get into this country feel as though they are in a pretty safe position because of the lack of interior enforcement or the will to enforce our immigration, whatever that issue is, that this provides a great incentive for people to take a chance to come across the border; is that a safe assessment?

Ms. JIMENEZ. I believe that people understand that you live in fear of an instability in the family and the community if you know that Immigration and Naturalization Service will take you at any moment. I can give you an example. A week and a half ago my father and I were watching television, we had four agents of the INS come into our home—

Mr. GALLEGLY. I think we know that is an exception rather than the rule, that otherwise we wouldn't have 8 or 10 million people illegally in the country. Would you say that the fact that many people do believe that once they get here that the biggest hurdle is over; is that a safe assessment?

Ms. JIMENEZ. Well, that is—

Mr. GALLEGLY. Yes or no.

Ms. JIMENEZ. Yes.

Mr. GALLEGLY. That being the case, would you say that it would be very wise for to us have a very aggressive program to remove those that are illegally in the country to remove that incentive, to enforce the immigration laws of the country, would you say that would be a bad or good idea?

Ms. JIMENEZ. If you wanted to have a police state, I think that is correct. The Mexican community has gone through that during the Depression, the repatriation program of the United States in cooperation with the Mexican Government. Over half a million peo-

ple were repatriated to Mexico. And it is—there are many stories of deaths of people——

Mr. GALLEGLY. We are——

Ms. JIMENEZ.—on the repatriation to Mexico.

Mr. GALLEGLY. So in other words, you are basically saying you don't think that would be a good idea.

Ms. JIMENEZ. I think you should legalize people. People in my community, in the immigrant community, when you ask them what do we do with the undocumented, they rarely answer deport them. Their answer is document them.

Mr. GALLEGLY. If you can illegally get into the candy store, once you are there you should be able to take whatever——

Ms. JIMENEZ. I think you should have alternatives of coming in legally as a first priority.

Mr. GALLEGLY. If you haven't done that and you have entered illegally, do you think you should be removed and given an opportunity to be processed legally?

Ms. JIMENEZ. I think you should have an opportunity, demonstrated rewards.

Mr. GALLEGLY. After or before you have returned to your native land?

Ms. JIMENEZ. I think we have a problem of people who are already settled here. I know many people that who have been here since 1977, and they still don't have legal documents.

Mr. GALLEGLY. People that were here in 1977 had the right to apply for amnesty and go through the process, in fact, about 57 million people did that.

Ms. JIMENEZ. Not if—I can give you cases in Houston, not if they were some shyster who said they would turn in their papers and they didn't. So they missed that opportunity, not necessarily because they didn't comply, but because having an undocumented population is a big business for many, many people and they are interested in keeping it that way.

Mr. GALLEGLY. Mr. Chairman, just for the record, may I ask one short, hopefully, what hopefully will be a very quick——

Mr. HOSTETTLER. Without objection.

Mr. GALLEGLY. Ms. Jimenez, I think it is commendable you are an American citizen. You have pledged your allegiance to this country as an immigrant. I would like to see everyone that is legally in this country, aggressively, be willing to pledge their allegiance to this country if they are here legally. If they are here illegally, I think they should return to their homeland. Could you share with the Committee, as an immigrant, how you initially entered the United States?

Ms. JIMENEZ. My father entered legally in 1956. And he brought our family legally into the United States in 1957. But at that time, it was fairly easy for someone with my father's skill, he is a machinist to quickly get his legal work done, and it only took us a year of petitioning. Now, it take years for a Mexican family to be reunited.

Mr. GALLEGLY. Mr. Chairman, I thank you, and I yield back.

Mr. HOSTETTLER. Thank the gentleman from California.

The Chair will now entertain a second round of questions and will yield to the gentlelady from Texas, Ms. Jackson Lee, who has

an appointment elsewhere. So we wanted to facilitate her asking questions.

Ms. JACKSON LEE. Thank you, Mr. Chairman. The Homeland Security Legislation is on the floor, and I am on that Committee, and I thank you very much for your, again, for your indulgence.

Let me pursue. Ms. Jimenez, as you well know, we are writing legislation, in particular, on trying to smash smuggling rings and bring a real answer to this concern. The Jackson Lee Legislation in particular has a provision that deals with the new class of non-immigrant aliens even the ability to earn access to legalization. Would that be a viable tool to deal with individuals who are not trying to come to do harm to the United States, but, in fact, are coming to fill in many of the gaps in the workforce that are here in this country?

Ms. JIMENEZ. Legalization and permanent residency, for those already here and in the future, is probably the most effective method combating these type of operations. Even the billions of dollars that are reaped by these commercial enterprises could easily be reoriented toward the U.S. Treasury because immigrants are willing to pay \$1,500, \$2,000, every time they cross. And have demonstrated that they—

Ms. JACKSON LEE. So that nonimmigrant status would be helpful, in this portion of the bill that I am writing, would be helpful?

Ms. JIMENEZ. Yes, that would be helpful.

Ms. JACKSON LEE. And the incentives to provide to families to provide information to the source, the actual source, the culprits, would that be helpful as well?

Ms. JIMENEZ. It would provide an incentive for many people to come forward that other wise don't.

Ms. JACKSON LEE. If I might, I would ask to have an article dated Sunday, June 17, 2003, in the New York Daily News, I believe refugees still held captive by red tape. I would like to ask unanimous consent to include this in the record.

Mr. HOSTETTLER. Without objection.

Ms. JACKSON LEE. It begins: Michael Chin vividly remembers the Golden Venture as if it were yesterday. He will never forget the rats, the rations and his thirst for freedom. Michael Chin happened to be a Chinese-American, and he came in on the infamous Golden Venture June 6, 1993. To date, Mr. Chairman, Mr. Chin is married, and owns a restaurant that many Americans are eating in in this part of this country. I think the point should be made that the immigrants have come to serve a working process or purpose. We understand our responsibility to our borders and to our Nation, but we have got to find a balance. Let me ask, Mr. Nuñez, your history, knowledge of this country, were we not built on the work and the influx of immigrants in many ways?

Mr. NUÑEZ. Certainly.

Ms. JACKSON LEE. That is—I thank you very much. I want to put that on the record. Let me go again to Mr. Garza. And simply say that in the course of working on the Border Patrol, as you well know, I have had legislation to increase professional development, to provide more resources. And I think with Chairman Rogers, formerly of the Committee that deals with this and Ranking Member Serrano, all of us and dollars have come to the Border Patrol, I

think, and we have tried to increase your numbers. In the course of seeing the kind of individuals coming across the border, the southern border, are these the kinds of individuals that—we must be astute and learned—I am not disregarding that there are by and large terrorists that are inclined to do harm to this Nation. What are you finding in your work?

Mr. GARZA. Ms. Jackson Lee, thank you. The majority of the people that the Border Patrol encounters are economic refugees. They are looking for a better way of life. However, we do have a criminal alien situation. And in my sector, we are running a pilot program with a system called IAFIS. And we are doing that since January. We have had about 10,000 searches into this program. We have hit on about 800 criminal aliens, but most of the people that are coming in are coming in to look for a better way of life. But we do have a criminal alien element that is of great concern to many areas of our country.

Ms. JACKSON LEE. So, therefore, if we were to provide you legislation that would give you the added incentives, not you, but added technology, as I have indicated in previous question that you are not familiar with it, but it is in a Department of Justice memo that this technology was used in an experimental basis, I do know the timing question is an issue but I think that with your expertise, you can tell the suspicious looking 18-wheelers versus the others. And then with laws that might provide extra incentives to those who would give information to help get at the source of the smuggling rings would be helpful as we move to smash these rings?

Mr. GARZA. This technology has been a great help, like IAFIS and the extra machines such as are depicted in the picture there, for checking those 18-wheelers are a big boost to us, although those x-rays machines are not ours, they belong to the Customs Agency Service. We are looking to try to acquire them, and surely, they would increase our capabilities of doing a better job.

Ms. JACKSON LEE. Let me just close by saying that I know that the Chair is familiar with this issue. I thank him for his good work. I know that you are working with some of these individuals who have suffered, but I wanted to acknowledge that these were from China who were involved in this. They have lived, I think, legally and respectfully here since 1993, and they are trying to overcome red tape to get where they need to be. But they are serving in their community, and they are serving their country, frankly, and they love this country. They simply want to be able to access legalization. These are the kinds of problems that we need to try and solve. With that, Mr. Chairman, I thank you for this very, very, I think, effective hearing. Very instructive. Many of us will have legislative initiatives that will be moving through the Congress. We hope that they will be bipartisan legislative initiatives that we can work on and ensure that we solve this problem in a fair and just manner.

Thank you. I yield back.

Mr. HOSTETTLER. I thank the gentlelady.

The Chair now recognizes himself for 5 minutes.

Mr. Garza, a couple of times we have been talking about technology today, as a result of Ms. Jackson Lee's questions, and if you could, just briefly for the record, discuss and describe the tech-

nology associated with the card that is up here with the plate that we have.

Mr. GARZA. Thank you, Mr. Chairman.

In the checkpoints that we operate in Falfurrias, Texas, and Sarita, we have a tremendous volume of 18-wheelers that come there on a daily basis. An 18-wheeler is nothing more than a container on wheels. These vehicles are very, very difficult to check. They are loud, they are high, and an officer cannot look in the cab. Our dogs do a great job of detecting loads of contraband that may be hidden anywhere on that 18-wheeler.

In this particular case, you are seeing some aliens up on the air dam that we would probably not have caught unless we had these x-ray machines that are presently on loan to us from the port of entry. They belong to the Customs Service.

Now, we are the same agency. Because of the merger we were able to get them to assist us and provide those x-ray machines for us. They are doing a great job for us. But, in some of those cases, I feel that if we did not have that technology we probably would not have been able to make those cases.

Mr. HOSTETTLER. Thank you, Agent Garza.

Mr. Nuñez, there has been some discussion about the incentivizing of individuals to help in the apprehension and prosecution of smugglers and to destroy smuggling rings. The folks at the Border Patrol, Agent Garza has supplied us with some of the leaflets and other postings that have been done by the Border Patrol with regard to disincentivizing those that might take part in the process of smuggling illegal aliens into the country; and that is available also as a card, as a placard that is being displayed right now.

There are already incentives in the law to allow individuals to help in the prosecution of and apprehension of smugglers, prosecution of smugglers, and the destruction of smuggling rings. Is that not correct?

Mr. NUÑEZ. Well, yes, there are some. The biggest, I suppose, incentive is that, at least for those people who are themselves here illegally, there is the incentive that they won't be prosecuted for having come here illegally or remaining illegally. In fact, you know, during the 20 years of my time prosecuting cases, we did not have that particular—the proposed incentive, and we really didn't have any problem prosecuting alien smuggling cases.

There is one other issue that you always have to deal with, and we—again, we see this in drug cases and tax cases. That is, that if you provide an incentive to a witness, that has to be disclosed.

Now the jury is—and the defense attorney is obviously going to try to impeach that witness by saying, well, you are just testifying so that you will get amnesty; and it would be a great fear that we would have to deal with, that people would come forward—people that are here illegally would come forward to point their finger at some neighbor that they didn't like, saying, hey, this guy is a smuggler or he has been involved in smuggling; now give me my amnesty.

So you have to figure out a way to make that incentive not lead to perjury and obstruction of justice and other more difficult problems.



Mr. HOSTETTLER. Very good.

Ms. Jimenez, there has been discussion today about various programs to normalize, regularize illegal immigrants into our society and give them status. The Immigration Reform and Control Act of 1986—I was not here during that process, but my understanding is that there was a lot of discussion that it would reform and control immigration and especially control illegal immigration.

But, today, as we have heard testimony today, and the statistics tells us that we have record levels of legal immigration and we have record levels of illegal immigration; and if we would pass legislation that would create some new form of legalizing of those that are here in the country illegally, isn't it—or isn't it our history that this would not stop illegal immigration, that there would still be those who would seek to enter the country illegally? And if we charged people coming into the country, if the Government charged them \$1,500 to come here, then smugglers would charge a thousand dollars to come here, and if we charged a thousand, they would charge \$750, and there would always be this incentive for the illegal immigration process to continue? Is that not right, given the history?

Ms. JIMENEZ. I think that if you also—beside the reform of immigration law—look for ways to expand economic opportunity in countries of origin—one of the things I think that is usually missed, whether the immigrant is undocumented or not, is that the person is also an agent of development in the sense that the billions of dollars sent home build communities. But they do not build them to the degree that we need to build them in order to develop sustainable economies that will allow for opportunities south of the border, if we are talking about Latin America.

So I think that, coupled with that, and not just immigration reform alone as a unilateral action, one can begin to see that legalization does minimize the need for a smuggler simply because you don't need to contract, you come in perfectly without any problem. And I think that the reason that smuggling rings particularly have consolidated into multi-billion dollar operations at this point is because it is much, much more difficult to cross borders.

Again, these are studies done by the University of Pennsylvania. Doug Massey has studies on this issue. They were not as necessary 10 years ago as they have become, because of border fortification.

So legalization will ease that pressure, and I think particularly the lead that many of the representatives in Congress of Arizona have taken is because I think that they have observed that, no matter how much we try to correct after the incident happens, that there is a benefit in preventing it from happening and that one of those avenues is mechanisms of legal migration, whether they be temporary workers, as described in the bill that Mr. Flake has, or permanent residency, as the one that Ms. Jackson Lee has.

Mr. HOSTETTLER. The Chair recognizes himself for an additional minute.

I want to follow up. My question dealt mainly with immigration into the country. The idea of bettering the economic status of other nations is an issue of jurisdiction of another Committee. My concern is immigration into the country. The experience says that amnesty does not work, and I guess what I should say is regularizing

those that are here illegally does not work. It, in fact, has created—I think the statistics would show very easily that it has created an incentive to expand illegal entry into this country.

So it sounds to me like what you are talking about is not limited legalization of those that are here but a process whereby there is essentially endless legal—and limitless legal immigration into the country for anyone in the world that wants a better life for themselves. Is that what you are suggesting?

Because we cannot control the issues of other countries, their economic destinies, their political destinies, we are asking—you are asking, you are suggesting limitless and endless—and when I say endless, I mean no end with regard to chronology or time period—immigration to our country until we reach a critical mass where most—where everyone that wants a job in the world can get and has gotten a job in the world in the United States of America. Is that what I am hearing?

Ms. JIMENEZ. Well, if I understand from population studies of the United Nations, the people—worldwide, the population movements, the United States receives 1 percent of those movements. So I think first we have to understand the percentage that actually do move to this country.

Mr. HOSTETTLER. If I can. And we constitute 4 percent of the world's population. That means a 25 percent increase in the population of the United States. So you are right with regard to percentage of the world overall. You are correct. But with regard to the growth of the United States itself, you are suggesting and the United Nations is suggesting 25 percent growth of the United States every year.

Ms. JIMENEZ. Well, I am not a population expert, so I can't—I only know facts which are published and known and in many testimonies I am sure that you have had before. But I would like to sort of, as part of this dialogue, recommend that we do engage in a more serious study as to the effects of populations and economic growth.

One of the arguments that is always placed forth publicly by one of our city council people and Mayor Pro Tem Gordon Quan in Houston is that if you do take all of the population of the United States and put them in California and Nevada, we still do not have the density of the population that Japan has. Yet, nonetheless, Japan has economic growth and development.

So there are different issues that perhaps I cannot answer because I am not a population expert, but I think it is worth exploring and dialoguing about to understand that relationship between population growth and movement of people.

The case we are making is for the case of particularly the population that is most—or when NINA says that 1.9 percent of the people arrested for being undocumented are Mexican Nationals, 97 percent of them are Mexican Nationals, that there is at least a case for regulating the entry and exit of persons between Mexico and the United States and Canada. It has already been designed in terms of free trade agreements as partner countries, and labor market integration should be one of those goals.

Mr. HOSTETTLER. The Chair now recognizes the gentleman from Arizona, Mr. Flake, for 5 minutes.

Mr. FLAKE. I thank the Chair.

I think that—I appreciate the testimony of everyone here and the perspective that each of you bring to this.

I think it is important that when we talk about regularizing or we throw terms around like amnesty or guest work or whatever that we be precise in what we mean by that. The legislation that I and my colleagues have introduced or will introduce very soon is not amnesty in any way, shape or form.

Amnesty is saying that, if you are here, that we are going to regularize you and make you legal or let you leap-frog over others in the process to become a legal permanent resident and thereafter a citizen.

The legislation that we contemplate, that we will introduce, actually penalizes someone for being here illegally. They have a tougher track to legal permanent residence and then citizenship if that track is what they choose to take. So it is actually a disincentive to be here illegally.

But we also recognize—and I think sometimes this is lost on people—that not everyone who comes here wants to become a legal permanent resident and thereafter a citizen. A good portion of those who come here, particular from Mexico, simply want to make life better for themselves in Mexico. They can only do that by earning money and sending it home to their families.

When we look at the figures, the long-term data, the migration studies that been done—and I mentioned before we used to have a largely circular pattern of migration. Those who had come here stayed an average of 2.6 years. Now, because of increased border enforcement, it is more difficult to come. They stay an average of 6.6 years.

A good number—certainly there are people who come here who want to become citizens. It is the American dream. A lot of people want it. Others simply want to make a life better for themselves in their home country and want to send money home to do that. So I think we ought to look in totality and look at the long-term history that we have with immigration and recognize that not everything we associate with one group of people applies to another, that there are differing needs that migrants have.

Ms. Jimenez, I was interested in your testimony. Do you see—if you have a policy, if you have a guest worker program that does not give advantage to those that are here illegally right now, if they are not advantaged by being here illegally, do you see that as a way to encourage people to come over, rather than apply for a similar type of work permit from their home country, which would actually give them that advantage to somebody who is here illegally?

Ms. JIMENEZ. It is difficult for me to answer that question because I don't think immigrants or people who migrate think of, I am going to move because there is going to be a legalization program, and that is going to benefit me. People move whether there is or there isn't. They will contract smugglers in order to come.

There are other factors which motivate the people, the reasons people come in or out. Now, immigrants have been willing in the past to pay penalties such as the penalties by—required by those in 245(i). They were significant amounts, a thousand dollars per

person; and they were willing to pay it per person and family. So those practices are acceptable in immigrant communities.

Is there an advantage? I think what we are saying is that it doesn't make much sense to work out a temporary worker program that does not include the protection of rights as well as the option for legal permanent residency of those that are not in the country if you already have so many within the country that don't have legal status.

Again, I don't think this is the motivating factor for why people migrate. That is the essence of criminality around undocumented migration, is because the motivations are other than legal status. Otherwise, if it was there, people would access them; if they are not, people still come.

Mr. FLAKE. I want to associate myself with the comments made by the Chair with regard to the Immigration Reform and Control Act of 1986. I think it was an unmitigated disaster, in that you granted amnesty and you encouraged people to come here for that purpose; and that is why I think, moving ahead, we need to distinguish. Like I said, words are important. We need to make sure that we have policies that actually don't encourage that but rather policies that recognize why people want to come here.

I thank the Chair.

Mr. HOSTETTLER. Thank the gentleman.

The Chair now recognizes the gentleman from Iowa, Mr. King, for 5 minutes.

Mr. KING. Thank you, Mr. Chairman.

The gentlelady from Texas made the remark that we have to find a balance to this policy I was raised in a different school, if something is wrong, it is wrong; if it is right, it is right. Sometimes you can't balance between two opposing positions, and this may be one of those. I mean, I can hear clear divisions between this panel in the remarks made by the testimony.

But she also asked the question pointedly, I think, of Mr. Nuñez that was this Nation built by immigrants? I heard an answer in the affirmative. It was you, Mr. Nuñez?

Mr. NUÑEZ. Yes.

Mr. KING. Thank you. So the question I would pose would be, Ms. Jimenez, do you agree with that comment, that this Nation was built by immigrants?

Ms. JIMENEZ. Yes.

Mr. KING. Thank you. And then could you name me a nation that was not built by immigrants?

Ms. JIMENEZ. I guess, previous to the greatest migration to the Americas, the European migration, I suppose the Aztec nation or the Inca nation.

Mr. KING. They migrated across the Bering Straits, according to any anthropologist.

Ms. JIMENEZ. Well, thousands of years earlier.

Mr. KING. Thank you.

I will just go down the panel. Mr. Nuñez.

Mr. NUÑEZ. One modification to my answer. Basically, this country was built on legal immigration; and I think that is a huge distinction when we are talking about this particular issue. We had no immigration laws really until 1882. Everybody came legally.

Then, even after that, most of the people came legally up until 1965.

Mr. KING. While I have you, can you name a nation that was not built by immigrants?

Mr. NUÑEZ. No, I think Mexico is another nation—all of the countries of the Western Hemisphere today, obviously, were taken over or populated or colonized or—pick your word—by European powers.

Mr. KING. Thank you, Mr. Nuñez.

Mr. HOMAN.

Mr. HOMAN. I do not know of any, sir.

Mr. KING. Thank you.

Mr. Garza.

Mr. GARZA. I don't know of any, sir.

Mr. KING. Thank you.

I appreciate having that in the record, that none of us can name a nation that was not built by immigrants. That is the typical mantra that we hear over and over again is that this nation was built by immigrants. It was. We need to respect and appreciate the efforts and the contributions made by immigrants. But it is world-wide phenomena, and no nation can shed itself from that history. We need to construct a nation that is built upon a wisdom that goes beyond that statement.

Let me see. Ms. Jimenez, you know, as I listened to your testimony, you made some remarks, including “that by no means are we calling for open borders” would be one of them; and “that we respect the need to maintain sovereignty” is another one.

Some of your testimony seemed to be somewhat inconsistent with those statements, so I would pose to you this question: What, in your estimation, would be an appropriate number of immigrants to allow into the United States through any means, total, between legal and illegal immigration?

Ms. JIMENEZ. I leave that up to you. What we do know, though, is that the current framework of immigration law creates a great deal of obstacles for people in terms of adjusting their status as well as in, like in my case—

Mr. KING. However they come here, there are obstacles, that is certainly true, and I think you have testified to that very well. But how would you propose—if we have a legitimate obligation and a right to maintain our sovereignty and control our borders and have a limitation on immigration policy, which I think we concur that is a logical thing, then how would you propose that we maintain those limits? What would you do to enforce our laws?

Ms. JIMENEZ. Well, I think that if people—I—first of all, I do think there is a case for allowing the right of mobility between the nations that are part of the North American Free Trade Agreement to begin.

Mr. KING. Are you referring to enforcement by—

Ms. JIMENEZ. Well, just taking another example of the Americans, the Mercosur agreement, in which the eight member countries of the Mercosur have agreed to basically allow its nationals to work as temporary residents for 2 years in any of the member nations—

Mr. KING. Neither does that sound to me like enforcement or limitations. I am asking you, would you propose any method or would you support any means by which we would limit or enforce our border laws?

Ms. JIMENEZ. I believe that, in the case of the three countries, we do need to look at ways of permitting mobility.

Mr. KING. Rather than enforcement? So you don't want to go down the path of enforcement with me. But you have advocated or at least suggested that the population density of Japan is certainly greater than that of the Southwest, and that that would be something that seems to be acceptable in your view. Would that also be acceptable for the United States as a whole to reach that kind of population density that Japan has?

Ms. JIMENEZ. I clarified that I wasn't a population expert. What I suggested was that we needed to look, as part of this dialogue, which I am thankful that this Committee has taken the initiative to begin this dialogue, as to all of the elements in terms of economic growth of countries, that we look at the example of Japan. Perhaps the Committee could subsequently hold hearings with people who are demographic experts in it as well as other experts that deal with these types of issues, but I think that it is a consideration for those people who preoccupy—or are preoccupied with numbers in terms of population.

Mr. KING. Ms. Jimenez, I do want to thank you for that. That is a legitimate response to my question. It is something that should be put on the table and considered, along with a whole series of the demographics that we have to consider—population density, the load on our resources, on our environment, on our law enforcement, on our health care, on our transportation industries, and our entire infrastructure. The pressure and the changes that will inevitably take place in the culture of this country versus the culture of the donor countries, all of these things need to be considered as we set forth on our national policy. Because, as we look back 25 years and see what kind of country it was then and what that policy brought forth with immigration policies that we have today, we need to be able to project that into the future.

There are very weighty decisions to be made, and those decisions are something that I don't hear this Congress really looking at or discussing. I appreciate all of the input that has come out here today.

I thank you, Mr. Chairman. I yield back the balance of my time.

Mr. HOSTETTLER. The Chair now recognizes the gentleman from California, Mr. Gallegly, for 5 minutes.

Mr. GALLEGLY. Thank you again, Mr. Chairman.

I am sorry Sheila isn't here, but I know that Mr. King and others have referred to the question that she asked of Mr. Nuñez as it related to the contribution that immigrants make.

Let's face it. We are the greatest country on the face of the earth, and we are a country of immigrants. We are also a country of laws. We allow more people the legal right to immigrate to this country every year than all of the rest of the countries in the world combined, and I support that.

I think it was Father Hesburg—and someone correct me if I am wrong—that said one of greatest threats that we have to our immi-

gration in this country is the fact that the front door is being threatened to be closed because the back door is off the hinges; and that is something that I think that we have to be very, very careful about.

We have a situation in California, my home State. The Golden State, the beautiful State of California, \$40 billion in red ink. We have a governor that very likely will be recalled, the first time in history. Very few have been willing to step up to the plate and identify one of the principal reasons that the State of California is facing bankruptcy.

We look at the issues of health care, education, criminal justice. And the issue of criminal justice, Mr. King asked the question about how many illegal immigrants are in prison. Well, I happen to know that, on a Federal basis, my understanding is 26 percent of the Federal penitentiary population, the people are in that penitentiary for committing a crime that has nothing to do with their immigration status, yet they are illegally in the country.

In my home county of Ventura I am told by the district attorney that 50 percent of the cases where he puts people in jail for committing a crime, they are people that are illegally in the country.

The illegal immigrant population in Los Angeles, and to a large degree the entire State of California, are using our emergency rooms and trauma centers not for emergency care but for general health care. Emergency rooms are closing every day. We are in an absolute crisis with health care in California.

The wisdom of our legislature in the State of California is denying an American citizen that might have lived in California all of their life, transferred to another State for a year because of business, their child moves back to California and is required to pay in-State—or out-of-State tuition at \$18,000 or \$20,000 a year. If you are illegally in the State or if you are illegally in the country, you pay \$600 or \$700, as compared to \$20,000 for a citizen.

These are issues that are creating tremendous problems in California and across the Nation. This is no longer limited to California. Illegal immigration is an issue that someone is going to have to be bold enough to stand up and not be mean spirited but for the good of the country and for everyone involved identify this as a real problem.

Mr. Homan, a question that I have for you. We have talked a lot about the integrity of the border today; and, of course, the purpose of this hearing has to do with the smuggling of people across the border. But I think that we also have focus on why people are coming here to start with, because if there was no need there wouldn't be a smuggling problem.

Do we have the will, do we have the resources, and do we have any form of commitment to interior enforcement? Because I firmly believe that the issue of interior enforcement is every bit as important as border enforcement. Because if you have don't have a magnet, vis-a-vis jobs, benefits and so on and so forth, there is no reason to come. People don't come to the wonderful State of California because of our beautiful beaches. There are beautiful beaches in many of the countries that they come from.

Could you address that?

Mr. HOMAN. Yes. I have been enforcing immigration laws for 19 years. I started in the Border Patrol, and I have been a special agent for the past 15 years. As a street agent, not a policymaker, I can tell you that interior enforcement has not received the resources the Border Patrol has. Interior enforcement under the legacy INS was not a priority.

I can honestly say under this new structure we now have an organizational structure and operational support through ICE, through the leadership of the Assistant Secretary, Michael Garcia, and Director of Operations, Michael Dougherty. I can tell you that investigators in this country under ICE are excited about our new structure and by our new strategy. I can honestly say. As an investigator in the field, Operation No Mercy in Victoria, TX. Was a clear example of how this new integrated authority from all of these legacy agencies came together.

INS now has ability to do data analysis, telecommunication intercepts. We bring our experience of alien smuggling to the table. This agency I think will excel in interior enforcement in the future, like the legacy INS was not allowed to.

Resources are always an issue. Legacy INS had approximately 2,000 interior enforcement special agents. After 9/11, the Border Patrol saw a huge augmentation in resources. Internal enforcement has seen nothing. Under this new integration, we now have about 5,500 special agents. We are going through an assessment period now of finding out, do we have enough resources to attack the issues?

The strategy is being put in place now, for the incident response teams, the proposed command coordination center that we are going to set up for incident response teams. So in the next few months we are going to find out what our resource issue is. But, right now, I can tell you we are in better shape now than we were with the legacy INS. The leadership that we have now is much better than the leadership I have ever seen in the past.

Mr. GALLEGLY. Mr. Chairman, unanimous consent for 20 seconds.

Mr. HOSTETTLER. Without objection.

Mr. GALLEGLY. Mr. Homan, again, for the record, we know that the budget has been tripled for INS over a period of 10 or 12 years. We know that interior enforcement for the last at least—I don't know how many years—5 or 6 years has been almost nonexistent. For the record, are you absolutely convinced that there is going to be a more aggressive enforcement on our interior for the purposes of removing people, criminal or otherwise, that are illegally in the United States?

Mr. HOMAN. Since the integration of ICE, I can tell you the attitude, the strategy, the leadership has changed. They are more dedicated to interior enforcement than I have ever seen in 19 years.

Am I convinced we will be successful? We will be a lot more successful than we have been in the past.

Will we need resources? Of course. We are dealing with—you know, in San Antonio alone last year, we processed nearly 10,000 criminal aliens. We did that with a staff of 50 agents, half of them dedicated to nothing but the jails and the prisons. That leaves another 25 agents to investigate anti-smuggling investigations, work-



site enforcement initiatives such as Operation Tarmac, fraud investigations such as the sale of fraudulent documents on the street, visa fraud, people entering the country through visa fraud.

One of the things that can help us is I think is this Government needs to send a message: If you enter this country illegally, we got to stop dangling this carrot of amnesty and guest worker programs.

If there is a legislation on guest worker programs, I am hoping it is open to the people in Mexico to enter the United States, not giving the opportunity to people that are illegally in the United States. Because in my 19 years I have interviewed literally thousands of aliens that I have personally arrested; and they are all looking for that amnesty. They are all looking for that guest worker program.

So, hopefully, in this legislation—I haven't seen the legislation, but, hopefully, they take that into account. Because as long as that carrot is being dangled, we are going to continue having immigration problems.

Mr. GALLEGLY. Thank you, Mr. Chairman. Thank you for a very, very good hearing.

Mr. HOSTETTLER. Thank the gentleman from California.

The Chair wishes to inform the Committee that the record will stay open for 7 days for any additions that Members would like to make.

I would like to thank the witnesses for your very excellent testimony and your assistance in this matter. It is our hope that the situation that took place in Victoria, TX, is not repeated, for the sake of those that may be impacted. I thank you for all of your input that you have given today. It has been very helpful to the Committee.

The business of the Subcommittee being completed, this hearing is adjourned.

[Whereupon, at 12:30 p.m., the Subcommittee was adjourned.]



## A P P E N D I X

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### MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF DAN STEIN, EXECUTIVE DIRECTOR, FEDERATION FOR  
AMERICAN IMMIGRATION REFORM

This statement outlines FAIR's views on the causes and tragic consequences of nearly unchecked illegal immigration, including the growing development of alien smuggling operations.

#### BACKGROUND

Illegal crossing of international borders has always been dangerous, as tragically recorded in the shooting deaths of persons fleeing persecution at the Berlin Wall. Fortunately, this cruel era is behind us, but accidental deaths continue to occur at the U.S.-Mexican border and elsewhere. Too often we learn of illegal migrants who drown or in past years were hit by vehicles as they ran across the border highway in San Diego.

Today the incidence of tragic deaths in urban areas has declined as the Border Patrol has regained control over illegal entry into what were once the primary corridors for illegal immigration. The pattern has now shifted to deaths in new rugged areas far from population settlements. At the same time this pattern of illegal entry has come to be associated much more with the operations of alien smugglers than in the past. Alien smuggling has become a major business in Mexico, and it operates as well on the U.S. side of the border, as was tragically demonstrated in recent instances of the deaths of illegal immigrants in Victoria, Texas, in highway accidents, and in rail cars used to transport illegal aliens into the interior of our country.

#### UNITED STATES AND MEXICO SHARE RESPONSIBILITY FOR TRAGIC LOSSES

It is clear that this ongoing loss of life of illegal immigrants is a challenge to our immigration law enforcement authorities to find means to ameliorate the danger without at the same time abrogating their responsibility to uphold the law. It seems obvious that the current level of continuing illegal immigration across the Mexican-U.S. border would not continue at the current level if the Mexican government were to adopt an active and continuous policy of identifying, apprehending and prosecuting alien smugglers. Recent campaigns announced by the Mexican government towards this end should be carefully watched to see if they are successful and sustained.

The responsibility to deter illegal immigration to the United States does not, however, lie entirely with Mexico. For example, every time local, state, or federal policy-makers take steps or announce plans for some form of amnesty through a new guestworker program, offer cut-rate college tuition for illegal aliens graduating from American public schools, or otherwise act to make life easier for illegal resident aliens, the result is always the same. Predictably, that result is new waves of illegal aliens, more death on our desert border, and more death at the hands of alien and drug smugglers. Similarly, our efforts to diminish the magnet of easy access to jobs in the United States have been deficient.

#### UNITED STATES MUST EFFECTIVELY COUNTER THE WORK MAGNET

Congress recognized in 1986 that to deter illegal immigration it is necessary to deny access by illegal workers to U.S. jobs and adopted the employer sanctions system to discourage employers through penalties from knowingly hiring illegal alien workers. Ten years later Congress acknowledged that the system had a major loophole because employers had no way to verify the identity and employment eligibility

documents that new employees were required to show their employer. The result was the establishment of the pilot verification projects. The Basic Pilot project has been operated on a test basis since then, has been evaluated by outside contractors, and has been found to be successful with only minor glitches.

Congress last year reauthorized the Basic Pilot and other test verification studies for another two years even before having received or studied the project evaluation. Thus, unless Congress acts more expeditiously, the issue of deciding to adopt the document verification system as a national mandatory system for all new employees will not be on the agenda for at least another year or two.

FAIR believes that the delay in adopting document verification to correct the primary deficiency of the employer sanctions system is unconscionable, especially when seen in light of the loss of human life that results from the continuing strong magnet of easy access by illegal alien workers to U.S. jobs. We urge members of the Subcommittee to shortcut the delay built into the reauthorization of the study of the Basic Pilot verification system and to initiate legislation to implement it at the earliest possible date as a national mandatory system.

It is clear that this will not entirely deny work opportunities to illegal alien workers. However, it will remove the job magnet for all employers who are unknowingly hiring illegal aliens as a result of counterfeit documents, and that is the vast majority of all jobs taken by illegal alien workers. When that is achieved, it will be much easier to concentrate the enforcement capability of immigration inspectors on those employers who continue to knowingly hire and exploit illegal alien workers. Prosecutions will become much easier when the defense of claiming to be unaware of the status of the illegal alien workers is no longer available.

Those defending a dependence on illegal alien workers are sure to claim that large sectors of the economy would collapse if illegal alien workers were removed. While it is true that some sectors of the economy, e.g., seasonal crop agriculture, have become addicted to illegal alien workers, that does not mean that the economic sector would confront disaster if illegal aliens were cut off from filling those jobs.

First, the inception of document verification by employers would apply only to all new employees. So only newly applying illegal aliens would be denied jobs. Illegal alien workers who are already employed would be denied employment only when they changed jobs. Thus the weaning process would be gradual.

Secondly, weaning these sectors of the economy from their dependence on illegal alien labor is necessary to restore the effective operation of the law of supply and demand to the sectors. If the employers in these sectors are unable to recruit legal workers for the wages that they have been paying—which in inflation adjusted wages are lower than were paid thirty years ago—they will have to offer higher wages to this most poorly paid segment of the U.S. workforce.

Third, the operation of document verification will put employers on a level playing field that has been absent for a long time. Today, an employer who wants to have a stable workforce by attempting to avoid hiring illegal alien workers by verifying valid Social Security numbers with the SSA, may face unfair competition from a competitor who, because of the profit motive, chooses to turn a blind eye toward the likelihood that illegal alien workers are on the payroll. This tends to penalize the responsible employer and reward the unscrupulous employer.

Finally, the on-going discussion of a new guestworker agreement to deal with the millions of illegal alien workers from Mexico and elsewhere ignores the fact that there is already a guestworker program designed to provide access by U.S. employers when they can demonstrate that they are unable to attract U.S. workers at the prevailing wage. In a period of contraction of the illegal alien worker population, there would be no reason that the H-2a and H-2b visa programs could not be used increasingly with only minor modification during the period of weaning away from illegal alien labor.

The objective would be to assure that temporary workers supplant illegal alien workers. The obvious benefits would include combating the exploitation of illegal alien workers and assuring a regulated and an orderly flow of foreign workers while avoiding the costs and dangers of entering the country illegally through smuggling operations. An added benefit would be that the job contracting process would assure that U.S. workers are not discriminated against by being undercut by illegal alien workers.

To summarize, both Mexico and the United States share a joint responsibility to combat the alien smuggling operations that increase the jeopardy for aliens attempting to illegally enter our country. Congress can make a major contribution to deterring illegal immigration and channeling foreign workers into temporary legal work programs by establishing the Basic Pilot document verification program as a national mandatory system without further delay. This will not only combat illegal immigration, it will reduce alien smuggling and the attendant risks to the illegal

aliens, and it will put U.S. employers on a level playing field in which the law of supply and demand is restored as the principal means for deciding the earnings of U.S. workers.

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June 23, 2003

Hon. John N. Hostettler, Chairman  
 Subcommittee on Immigration, Border Security, and Claims  
 B-370B Rayburn House Office Building  
 Washington, DC 20515

Dear Mr. Chairman:

The undersigned are almost all retired law enforcement officials, each having twenty or more years of immigration and border law enforcement experience. We strongly urge you to take a long, hard look at the real causes of alien smuggling and the human tragedies that result from this criminal activity.

Alien smuggling into the United States is not a new phenomenon. It has been around ever since Congress first enacted legislation to enforce laws restricting immigration into our country. Actually, the Border Patrol was created by Congress in 1924 in response to the smuggling of Chinese aliens through Mexico into the United States. Over the years, smugglers have become increasingly organized, enterprising and ruthless in conducting their profession.

Alien smuggling has become an extremely complex enterprise. Smugglers employ resources that rival the best that American law enforcement can muster and employ. Gangs of smugglers, unrestrained by the Constitution, other legal restrictions and Congressionally mandated budgetary limitations are free to employ tactics denied American law enforcement officers.

Smugglers regularly use inhumane criminal acts including murder, extortion, kidnapping, rape, torture and other such activities to protect their interests and intimidate potential witnesses against their enterprises. Smuggling gangs have tentacles in every community in the United States in which there are enclaves of recent immigrants. Once smuggling was strictly a cash and carry business, but in the past three or four decades, smuggling on credit has become the norm. To collect their money smugglers have entered the dark world of loan sharking, collecting not only their fees, but huge rates of interest on money due for their services. To make collections they have set up vast networks of "enforcers" who use every cruel method of collection possible. Many smugglers force their clients into years of virtual slavery, prostitution and other depravities to pay off their debts. Frequently, smugglers even imprison and enslave family members until the debts are paid.

With exception of aliens indigenous to our border areas, most aliens seeking entry from either the interior of Mexico or from other countries of the world have little knowledge of border geography and terrain. Mexican aliens from Mexico's interior, who are eligible for immediate voluntary departure may try to enter on their own a few times in hopes of saving smuggling fees, but most, after being caught several times at entry or soon after

entering resort to professional smugglers to increase chances of success. Aliens from countries other than Mexico know that if they get caught entering, they are not eligible to be sent back to Mexico. They will be held in custody, given a hearing and be formally deported if they are caught. Such aliens invariably will hire professional smugglers to improve chances of success.

As long as we enforce our immigration laws, smugglers will operate to attempt to evade those laws for profit. There are only two choices to be made to attenuate the evil effects of smuggling. The first, we believe is totally unacceptable to the people of the United States. That is to stop enforcing our immigration laws. Open our borders to anyone and everyone desiring to cross our borders at any time and any place they choose for any and every motive. That would mean that we surrender our society to terrorists, criminals, carriers of every exotic disease in the world and total degradation of our environment. It is unlikely most American people would accept the costs such surrender would bring to our society as a fair exchange for making it more comfortable to illegally cross our borders.

The other choice, the only acceptable choice, is to better enforce our immigration laws. Put an end to the endless rewards of illegally crossing our borders. First, we must deprive aliens illegally entering the United States of the jobs and other benefits that make it profitable for them to come here. Concurrently, we must do a better job of enforcing the law at our borders. We must commit sufficient personnel and technical resources to safeguarding our borders in both populated and remote areas.

There is no place along our borders too difficult for smugglers to attempt to ply their trade. Whether they smuggle in remote areas or in urban populated areas, professional smugglers expose their clientele to terrible risks to life and limb.

In remote, difficult terrain, the weak are all too frequently abandoned without water or shelter to expire from effects of a hostile environment. When smuggling was rife in urban areas, smugglers would force their clients to run onto freeways and other heavily traveled roads to evade apprehension. So many were dying from such tactics that the state of California even posted signs warning motorists of the threat of pedestrians illegally running on and across limited access roadways. Not infrequently illegal immigrants are found dead and dying in the backs of trucks, boxcars, automobiles, bilges of ships and boats and other conveyances never meant for the transportation of human beings. Smugglers intentionally put their clients at terrible risks because that is how they best avoid detection and interception.

Illegal immigration and smuggling are increasing, and much of the reason for that is due to an atmosphere created by policy makers who, intentionally or unintentionally, convey the message to poor people around the world that now is the time to set out on the journey because (1) we need these workers to do jobs that Americans won't do, (2) we will not vigorously enforce the removal of illegal alien workers and (3) that illegal alien workers should be accommodated with legal work status and eventual permanent residence. Mere discussion of legal status for illegal alien workers by whatever

terminology is understood to be an amnesty in the foreign communities from which these persons come and is enough to encourage hundreds of thousands, even millions of people around the world to abandon their homes and families to come give it a try. Most turn their lives and safety over to professional smugglers to take advantage of what they see as a promise.

Only total abandonment of any attempt to have and enforce immigration laws and surrender of our borders will end the cycle. Easing up on enforcement in "easy crossing" areas as some advocate will just create chaos in our populated areas along with equally intolerable deaths and injuries on crowded urban thoroughfares, increases in crime and other tensions in communities that now line our borders in populated areas. As long as you have a Border Patrol and limit legal entry through designated ports of entry by only eligible persons, there will be smuggling and smugglers. As long as there are smugglers, they will always be ruthless, inhumane and uncaring for human life as well as for the property across which they move their hapless clients.

Policymakers who sweeten the attraction of U.S. jobs with the hope of legal status for illegal alien workers contribute to the climate that leads to the deaths and injuries we are experiencing on our borders. Entire criminal enterprises have sprung up and flourished to take advantage of the aspirations of poor foreigners and the weaknesses that are part of our current immigration law and enforcement policy.

We urge you to address those weaknesses in order to combat the border mayhem and to restore a sense of safety to the American people in their homes and communities.

Sincerely,

/s/

James R. Dorcy, Senior Special Agent (Retired)  
U.S. Department of Justice/Immigration and Naturalization Service/  
Office of Inspector General

William S. King  
Chief Patrol Agent (Retired)

Eugene M. Botts  
Assistant District Director for Investigations (Retired)

Paul Murphy  
Chief Inspector (Retired) or Deputy Assistant Commissioner, Inspections (Retired)

Joseph D. Cyr  
Supervisory Border Patrol Agent (Retired)

Sidney Skiffington  
Supervisor Immigration Inspector (Retired)

Robert McCord  
Chief Patrol Agent (Retired)

Hugh Brien  
Chief, United States Border Patrol (Retired)

Kenneth Tilsley  
Patrol Agent In Charge (Retired)

Tony R. Hobert  
Senior Special Agent (Retired)

John H. Frecker  
Senior Border Patrol Agent (Retired)

Arno A. Henderson  
Patrol Agent in Charge (Retired)

William E. Glenn,  
Regional Intelligence Officer, Western Region, INS (Retired)

Michael S. Williams  
Chief, United States Border Patrol (Retired)

David J. Stoddard  
Supervisory Border Patrol Agent (Retired)

Douglas Kruhm  
Chief, United States Border Patrol (Retired)

Harold M. Slocumb  
Supervisory Border Patrol Agent (Retired)

Eugene R. Davis  
Retired Deputy Chief Patrol Agent (Retired)

Eugene E. Dale  
Border Patrol Agent (Retired)

George E Tarrant  
Criminal Investigator&INS Representative to Miami Strike Force (Retired)



Jesse J. Bell  
Assistant District Director for Investigations (Retired)

Ben Greenwood  
Assistant District Director Detention & Deportation (Retired)

Thomas J. Cronin  
Criminal Investigator (Retired)

Charles E. Wise  
Senior Special Agent (Retired)

Jordan B. Hillard  
Area Port Director (Retired)

Patrick Comey  
Acting Officer in Charge, Islamabad, Pakistan

Clarence P. Jones  
Assistant Chief Patrol Agent (Retired)

James S. Switzer  
Chief Patrol Agent (Retired)

Arnold E. Forsyth  
Patrol Agent in Charge (Retired)

W. W. Belcher  
Regional Immigration Examiner (Retired)

Thomas B. Gray  
Patrol Agent In Charge

Karl L. Nelson  
Deputy Assistant District Director For Investigations (Retired)

Bob Gilson  
Assistant Chief Patrol Agent (Retired)

Robert A. Bollier  
Patrol Agent in Charge (Retired)

John A. Krupa  
Supervisory Border Patrol Agent (Retired)

Earl T. Reynolds  
Supervisory Border Patrol Agent (Retired)

Jerry Goodman  
Supervisory Anti-Smuggling Agent (Retired)

Earle W. Galbraith  
Senior Special Agent (Retired)

Richard Foote  
Supervisory Border Patrol Agent (Retired)

Charles M. Seamon  
Officer In Charge (Retired)

John D. Adams  
Border Patrol Agent (Retired)

Terry J. McIntosh, Sr.  
CHIEF, Immigration Officer Academy (Retired)

George Zachary Taylor  
Supervisory Border Patrol Agent (Retired)

Raymond E Young  
Anti-Smuggling Agent (Retired)

Steve Niblet  
Assistant Chief Patrol Agent (Retired)

Don A. Shelnutt  
Field Operations Supervisor, U.S. Border Patrol (Retired)

Ed Doherty  
Assistant District Director, Detention & Deportation (Retired)

Owen Lyons, Jr.  
Assistant District Director, Investigations (Retired)

David W. Wolfe  
Assistant Regional Commissioner, Eastern Region, Adjudications (Retired)

Allen E. Wells  
Assistant Chief Patrol Agent (Retired)

David J. Castaneda  
Assistant Chief Patrol Agent (Retired)

Leo E. Dunnigan  
Deputy Chief Patrol Agent (Retired)

Thomas C. O'Brien Jr.  
Senior Special Agent (Retired)

Ray Harris  
Supervisory Border Patrol Agent/Special Agent (Retired)

Bobby L Cook  
Regional Deportation Officer (Retired)

Oscar R. Tellez  
Assistant Officer in Charge (Retired)

Philip L. Adam  
Supervisory Border Patrol Agent (Retired)

Michael J. Sheehy  
Deputy Chief Patrol Agent (Retired)

David Merrell  
INS Special Agent (Retired)

Richard B. Lensink  
Supervisory Anti-Smuggling Agent (Retired)

Robert Page  
Senior Anti-Smuggling Agent (Retired)

Crestino H. Gonzales (Ret)  
Port Director (Retired)

Jessee F. Tabor  
Chief Patrol Agent (Retired)

Ruben R. Rains  
Officer in Charge (Retired)

Donald L. Barley  
Patrol Agent in Charge (Retired)

Gene G. Rutledge  
Chief Patrol Agent (Retired)

E.B. Pyeatt  
Deputy Chief Patrol Agent (Retired)

Harry E. Surface  
Chief Patrol Agent (Retired)

Frank M. Pearce  
Anti-Smuggling Agent (Retired)

Jack Fortner  
Assistant District Director, Examinations (Retired)

Paul W. Cheek  
Senior Special Agent (Retired)

Jerry R. Chandler  
Assistant Chief Patrol Agent (Retired)

Thomas E. Keating  
Special Agent Anti-smuggling (Retired)

Martin Scott  
Supervisory Special Agent (Retired)

Andrew M. Voytush Jr.  
Supervisory Border Patrol Agent (Retired)

Ted L. Bader  
Patrol Agent in Charge (Retired)

Robert J. Miller  
Field Operations Supervisor (Retired)

Joseph P. Marion  
Intelligence Agent, Border Patrol (Retired)

L. Hughes  
Concerned Citizen

Lyle L. Karn  
District Director (Retired)

Roger P. (Buck) Brandemuehl  
Assistant Commissioner, U.S. Border Patrol (Retired)

William R. Holly, Jr.  
Special Agent (Retired)

H. Randolph (Randy) Williamson  
Supervisory Border Patrol Agent (Retired)

Steve Donnelly  
Special Agent Anti-Smuggling Unit (Retired)

Ed Woods  
U.S. Border Patrol Pilot (Retired)

John W. (Jack) Kearney  
Supervisory Border Patrol Agent (Retired)

Arnold W. Holthus  
Deputy Assistant Regional Commissioner, Detention and Deportation (Retired)

Jeffrey M. Fields  
Patrol Agent in Charge (Retired)

Jack E. Gorman  
Chief Patrol Agent (Retired)

Michael S. Roth,  
Anti-Smuggling Agent (Retired)

Robert J. Stille  
Patrol Agent in Charge (Retired)

Perry W. Steele, Jr.  
District Director

Timothy N. Waller  
Special Agent USINS (Retired)

Peter K. Nunez  
U.S. Attorney/Asst. Secretary of Treasury (Retired)

Michael Harpold  
Supervisory Immigration Officer (Retired)

Burton L. Adcock  
Assistant District Director, Detention & Deportation (Retired)

Gary B. De Cocq  
Senior Border Patrol Agent (Retired)

Clovis E. Roland  
U.S. Border Patrol Pilot (Retired)

Harold R. Beasley, Sr.  
Supervisory Border Patrol Agent (Retired)

Robert Ackerman  
Officer in Charge (Retired)

Irwin C (Tex) EWING  
U.S. Border Patrol Airplane Pilot (Retired)

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PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF TEXAS

Last week, prosecutors indicted 14 people who allegedly organized or facilitated the smuggling incident that ended on May 14th when a crowded trailer was found abandoned at a truck stop in Victoria, 100 miles southwest of Houston. The 14 were charged with various counts of conspiracy to conceal or transport immigrants. Twelve could face the death penalty if prosecutors decide to pursue it. More than

70 immigrants from Mexico, Central America, and the Dominican Republic were crammed into the tractor-trailer. Among the dead was a 5-year-old boy from Mexico. Seventeen immigrants died at the scene, and 2 others died later.

According to U. S. Attorney Michael Shelby, "alien smuggling is all about money. These aren't people who are trying to make a better life for (others) and just providing them a pathway. This is about an American dollar bill and people that will do anything and risk anyone's life in order to gain that dollar bill."

In this incident, the price per immigrant was \$1,500 to \$1,900. Alien smugglers have reaped millions of dollars in profits, with some not only collecting a fee up front, but also robbing, beating, and raping the immigrants once in the United States.

Last year, the General Accounting Office (GAO), the investigative arm of Congress, was critical of the U.S. Immigration and Naturalization Service (INS) with respect to its efforts to combat alien smuggling. The GAO said that INS efforts to curb smuggling were disorganized, seldom tracked, and did not meet the required level of accountability. GAO investigators stated further that in several border areas, including Arizona, multiple antismuggling enforcement units existed that had overlapping jurisdictions, operated autonomously, and reported to different INS officials. The INS officials had no clear criteria about which cases needed to be investigated.

The INS has since been disbanded and its enforcement divisions have been folded into the Department of Homeland Security as part of the Customs and Border Protection unit. It does not follow necessarily, however, that this organizational change will result in more effective field operations. We need to use our oversight authority to ensure that the Bureau of Customs and Border Protection does not make the same mistakes that were made by INS.

The Arizona border with Mexico has become the hub of alien smuggling. About one-third of the 1.2 million arrests of undocumented immigrants that the Border Patrol expects to make this year will occur along a 260-mile stretch of the U.S.-Mexican border southwest of Tucson. This section of the border has alien-smuggling corridors that run through hostile desert terrain where there is little or no water, and summer temperatures can soar to 120 degrees.

Last year, Border Patrol agents in the Tucson sector apprehended 449,675 undocumented aliens, more than 1,200 a day. Despite these enforcement efforts, more than a hundred undocumented aliens died in the desert, and many more had to be rescued.

The high level of activity along this border is a consequence of an increase in the effectiveness of law enforcement along other sections of the border. As it becomes more difficult for the smugglers to cross along one section of the border, they shift their smuggling activity to another section of the border.

Alien smuggling will not stop until we establish an immigration policy that substantially reduces the need for illegal entry into the United States. In the meantime, our highest priority should be to do what we can to reduce the deaths. I will be introducing a bill later this week that would help in achieving that objective. It would do this by establishing a three-point program which has been designed to facilitate the investigation and prosecution, or disruption, of reckless commercial smuggling operations.

The first point of this program would provide incentives to encourage informants to step forward and assist the federal authorities who deal with commercial smuggling operations. The Immigration and Nationality Act presently provides a non-immigrant classification for aliens who assist the United States government with the investigation and prosecution of a criminal organization or with the investigation and prosecution of a terrorist organization. My bill would establish a new, third category for aliens who assist the United States government with the investigation and prosecution of a commercial smuggling operation.

This new nonimmigrant visa classification would be offered to potential informants by the State Department and the Justice Department, in addition to being offered by the Homeland Security Department. Alien smuggling operates across international lines. No single federal agency can deal with it.

The real incentive, however, would not be a nonimmigrant visa classification. It would be lawful permanent resident status. If, in the opinion of the Secretary of Homeland Security, the Secretary of State, or the Attorney General, the informant has supplied information which has substantially contributed to the success of the investigation, prosecution, or disruption of a commercial alien smuggling operation, the Secretary of Homeland Security would have the authority to adjust the status of the informant to that of an alien lawfully admitted for permanent residence. Moreover, adjustment of status could be offered also to the spouse, the married and unmarried sons and daughters, and the parents of the alien.

The bill also would offer a monetary incentive to become an informant. It would establish a reward program to assist in the elimination or disruption of commercial alien smuggling operations in which aliens are transported in groups of 10 or more, and where either the aliens are transported in a manner that endangers their lives or the smuggled aliens present a life-threatening health risk to people in the United States.

The rewards program would be similar to the one the State Department presently uses to obtain informants in cases involving terrorists. It would be administered by the Secretary of Homeland Security, in consultation, as appropriate, with the Attorney General and the Secretary of State.

I am concerned about the safety of the people who become informants, so the bill also would establish a protection program. If the Secretary of Homeland Security, the Secretary of State, or the Attorney General determines that the identity of an informant or the members of the informant's family must be protected, such official would be able to take such lawful action as the official considers necessary to protect them.

The second point in the program would be a penalty enhancement provision. In the case of a person who has been convicted of smuggling aliens into the United States, the sentencing judge would be able to increase the sentence by up to 10 years if the offense was part of ongoing commercial smuggling operations, the operations involve the transportation of aliens in groups of 10 or more, and either the aliens are transported in a manner that endangers their lives or the smuggled aliens present a life-threatening health risk to people in the United States.

The third point would be an outreach program. It would require the Secretary of Homeland Security, in consultation, as appropriate, with the Attorney General and the Secretary of State, to develop and implement an outreach program to educate the public here and abroad about the penalties for smuggling aliens. It also would provide information about the financial rewards and the immigration benefits that would be available for assisting in the investigation, disruption, or prosecution of a commercial alien smuggling operation.

I believe that this can be a bipartisan bill and that the three-point program it would establish would reduce the number of deaths from reckless alien smuggling practices.

Thank you.

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#### PREPARED STATEMENT OF CONGRESSMAN JEFF FLAKE

Mr. Chairman, I applaud you for your leadership in conducting this oversight hearing today on the very important topic of alien smuggling. As you know, this issue is of particular relevance in my home state of Arizona where, according to the Border Patrol, 146 aliens died in 2002 while attempting to enter the country from Mexico. As you know, I have requested a field hearing by the Subcommittee in Arizona on this very important topic, and remain hopeful that a visit by Members of the Subcommittee to the southwest border would be instructive to them on the many issues facing Arizona as a result of its location on the border. But this hearing is certainly a great first step in that direction.

Mr. Chairman, the situation on the U.S.-Mexico border has spawned numerous problems. One need only glance at the Arizona papers on any day, and the headlines tell countless stories of lost lives, destroyed property, and mistreated people—in general, a troubling situation:

Nearly every day, the desert claims the life of another illegal immigrant attempting to enter the U.S., most likely seeking work and the chance to make a better life for themselves and their families.

The Maricopa County Sheriff's office is puzzled by a string of execution-style slayings, but speculates that it could be a turf battle between rival gangs of coyotes.

Health care costs have skyrocketed and hospitals have cut back on crucial services in Arizona, as they must treat those injured while trying to cross the border illegally.

Shootings on the border have been observed with alarming and increasing frequency.

Frustrated property owners, seeing their property destroyed, and fearing the immigrant traffic across their property, take matters into their own hands.

Family members of illegal aliens who have perished at the hands of smugglers while attempting to cross the border have filed lawsuits against the U.S. government. The lawsuits contend that the immigrants' deaths could have been prevented if a humanitarian group had been allowed to install water stations in the desert.



While we may not agree with the choices taken by these immigrants to break the law and enter our country without proper authorization, we cannot help but be moved by the abuse that many of them face at the hands of unscrupulous coyotes. However, sympathy alone is not enough. As legislators we are charged with addressing problems as serious as the ones faced on the southwestern border, and that is why I believe Congress should consider an initiative that could alleviate many of the burdens that Arizona and the rest of the country suffers due to the problem of illegal immigration. A temporary foreign worker program would direct the flow of workers into legal channels and promises to aid the government in getting a better handle on who is here and who is crossing the border.

There is a demand in the U.S. for labor that many Mexicans are willing to supply. Rather than turning a blind eye to that fact, I support a program that would allow these workers legal entry into the U.S. so that they can perform the jobs that U.S. employers are offering. This legal framework would allow the U.S. to collect taxes and would provide the workers a safe and legal way to return to their homes and families.

I recognize that there are many who say the answer to the problem of illegal immigration is to tighten border security. Certainly, the southwest border should be secured more effectively. However, it is naive to assume that more agents along the border alone will stem the flow of illegal immigration.

Research indicates that, prior to the passage of the Immigration Reform and Control Act in 1986, the flow of Mexican laborers was largely circular. The average stay in the United States of an undocumented migrant from Mexico was 2.6 years; by 1998, after the enhanced border enforcement of the 1990s, the median stay had risen to 6.6 years.

Our border policy aimed at reducing illegal immigration has perversely encouraged illegal immigrants to stay in the U.S. Crossing the border is risky, so illegal workers are increasingly reluctant to repeat the trip more often than necessary once they are here. Also, smugglers are expensive, so workers must remain in the U.S. longer to pay for the high cost of crossing. A temporary worker program that once again permits immigrants to enter and work in the United States, then return home again, will re-establish this circular migration flow.

From 1986 to 1998, the amount of tax dollars that Congress appropriated for the INS increased **eightfold**, and for the Border Patrol **six fold**. The number of Border Patrol agents assigned to the southwest border **doubled to 8,500**. The end result of this huge increase in enforcement efforts? More than 7 million illegal aliens reside within U.S. borders. How can we honestly tell the taxpayers that this strategy has been a success?

According to Steven Camarota of the Center for Immigration Studies, "A real effort to control the border with Mexico would require perhaps 20,000 agents and the development of a system of formidable fences and other barriers along those parts of the border used for illegal crossings." The wisdom of embarking on such a project is questionable, at best, I believe. Many of these illegal immigrants do know the risks of an illegal border crossing, and it does not deter them. They believe that the opportunities in the U.S. outweigh the risks associated with a desert crossing.

Mr. Chairman, we can crack down on alien smugglers more harshly, and impose stricter penalties on them when we catch them. I am working on legislation to do just that. However, when we hear law enforcement officials estimate that, in certain Mexican border regions, immigrant smugglers can earn up to \$1.5 million a day, I would submit that we cannot fight such irresistible market forces. We need to collect the courage to take a serious look at the problems that our current border policy has wrought, and acknowledge that there may be a better way to address the situation. Let's put the smugglers out of business and formulate a more realistic approach.

Thank you again for the hearing on this important topic. I look forward to the testimony of the witnesses.

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**SECTION:** NEWS; Pg. 8 DAILY NEWS SPECIAL REPORT

**LENGTH:** 1594 words

**HEADLINE:** REFUGEES STILL HELD CAPTIVE BY RED TAPE Amnesty fight lasts a decade

**BYLINE:** By RICHARD T. PIENCIAK Daily News Senior Correspondent

**BODY:**

**Michael Chen** vividly remembers the Golden Venture heading for the Golden Mountain as if it were yesterday. He will never forget the rats, the rations and his thirst for freedom.

In the early morning hours of Sunday, June 6, 1993, the Golden Venture, a dilapidated freighter holding 282 illegal Chinese immigrants as its cargo, struck a sandbar offshore from Fort Tilden on the Rockaway peninsula.

Ten of the passengers drowned or died of hypothermia while trying to swim ashore in 53-degree water and high waves.

Although Chen, who was only 20 at the time, survived the torturous 16,000-mile journey, he has been foundering in a sea of immigration red tape ever since.

"We've tried to get permanent residence here. And in 10 years I've never given up hope. America is the freedom country," Chen said. "But I'm scared. We shouldn't have to be hiding. I'm afraid of being picked up by immigration. Who knows? It could happen to me tomorrow."

Of those who made it to shore, about 45 were granted political asylum, about 140 returned to China - voluntarily or via deportation proceedings - and about 50 were sent to other countries, said Beverly Church, a paralegal in Gettysburg, Pa., who has worked on the Golden Venture case.

That leaves Chen and 37 other men who are trapped in an immigration black hole. They have been allowed to live, and work, in the United States pending a decision on amnesty that has never come.

Over the years, Chen has become quite Americanized.

He changed his name from Chen Sherm Dee, to fit in better. He married Xiu Lin, 22, on Sept. 1, 2002, in New York City, with several of his Golden Venture comrades in attendance.

He and his wife have a 3-month-old son, Allen. He owns and operates a restaurant outside Columbus, Ohio, called the Cafe China.

"We've been very good citizens. We pay taxes. We work six days a week and 12 hours a day," he said.

But he and his buddies - who live quietly in about eight states, including New York and New Jersey - are not free.

"I think it is most unfortunate that it's 10 years later and these men are still in limbo," said the Rev. Joan Maruskin, who heads the Church World Service's immigration and refugee program in Washington. "Unfortunately, these men happened to be the ones caught up in a system that is painfully slow and very unjust."

A bill introduced by Rep. Todd Platts (R-Pa.) would give amnesty to the 38 - and immediate permanent residency. But a similar bill in the last Congress died without action.

"This is our last chance," Chen said of the Platts proposal. "We hope we can get the amnesty bill so we can stay here legally. I want permanent residency. I don't want to be illegal. I don't want to be hiding. It's scary every day."

#### National attention

It was shortly before 2 a.m., a decade ago this Friday, when the plight of the Golden Venture first came to the attention of New York law enforcement. Quickly, the world would learn of the horrors, which crystallized national attention on the illegal migration of Chinese to the West.

Those aboard had prepaid about \$5,000 each and promised an additional \$30,000 in stateside labor to a syndicate of snakeheads, the term given to smugglers of human contraband.

During their three-month trek, the passengers were crammed into two tiny storage holds, each 25 feet by 40 feet, forced to share a single bathroom, fed a meager offering of rice with vegetables or stale peanuts - just once a day - and small rations of water. They shared their living space with lice, rats and roaches.

The journey for freedom began in January 1993, when a freighter bearing a Panamanian registration and the name Tong Sern left Bangkok - its holds empty.

Several weeks later, with the vessel out in the South China Sea, about 100 Chinese boarded, transported to the ship by speedboats.

From there, now sailing under the Honduran flag and the name Golden Venture, the rusting ship headed for Singapore.

As the ship departed, the immigrants shouted "America, America." They were bound for a new life in the U.S., a land that Chinese illegals have long called the Golden Mountain.

From Singapore, the ship headed to Mombasa, Kenya, where the rest of the illegal passengers were picked up. The second group had been aboard another ship, the Saudi-owned Najd II, that had been seized by authorities.

But the snakeheads arranged for a local fishing vessel to secretly ferry the Chinese out to the Golden Venture, which was waiting offshore.

Chen was among those who boarded in Kenya but said his trip actually began in 1991, two years earlier, when his parents shipped him off to Burma, then Thailand, and finally Kenya.

"Out on the ocean, I was so scared because we ran into a couple of big storms," Chen said. "I was a little bit seasick, too."

In mid-May 1993, as the Golden Venture approached the Eastern Seaboard, the captain searched in vain for several small boats that were supposed to rendezvous for transfer of the

passengers for the final leg.

When a fleet of small boats failed to appear at a second rendezvous point, the representative of the Chinese crime boss who ran the operation tied up the captain and ordered the Golden Venture steered toward Rockaway.

An ugly trip turned uglier when the Golden Venture hit a sand bar.

"I said, 'We finally landed.' My first thought was 'America is the freedom country,'" Chen said. "But it was a horrible night. It was so cold. And also, we were so weak because we'd been on the boat for so long."

As authorities sought to cordon off the Queens beachfront, about two-thirds of the passengers jumped off and tried to swim ashore. The remaining 100 stayed on the 175-foot ship to await the arrival of rescue personnel.

Chen says he didn't jump into the water because he cannot swim. "I waited on the boat until the rescuers came. I was lucky. Many people tried to run away. They jumped in the water. When the waves came, they couldn't stand up. A lot of people called, 'Help, help.' It was so horrible."

Most of those who reached the beach, near Jacob Riis Park, were too tired to move and were picked up by police. About 30 passengers, however, fled into the neighborhood.

Soon, the beach was filled with ambulances. One official would later characterize the mission as the city's largest rescue effort, other than the World Trade Center bombing earlier that year.

Several dozen of the passengers were taken to local hospitals to be treated for hypothermia and exposure; the dead were taken to the city morgue. The survivors were taken to holding cells.

The immigration system in the city could not possibly hold that many detainees, so more than 200 of them were transported to local jails in Pennsylvania, Maryland and Virginia.

Most were sent to the York County Jail in central Pennsylvania. While there, many passed the time by transforming a paper-folding pastime into an art form, creating increasingly elaborate paper sculptures as gifts for their supporters. The best of the works were later displayed at museums across the nation.

A local group in York affiliated with the United Methodist Church was formed, and, calling itself the People of the Golden Vision, took up the fight for the detainees' freedom.

#### Claims rejected

Many in custody petitioned for political asylum. Some cited China's coercive family-planning laws - the one-child-one-family rule and forced sterilization policies. Others claimed religious persecution. Most of the claims were ultimately rejected.

Little by little, the prisoners were returned to China or sent to neutral nations, including Ecuador, Venezuela and Canada.

After four years, Chen and the others in the final group were released from York County Jail in February 1997 by special order of then-President Bill Clinton, pending determination of their immigration status.

But the bureaucracy sucked them in, said Church and Maruskin.

And then came the terrorist attacks on 9/11.

"I think that hurts us a little bit," said Chen. "Before Sept. 11, people could get work cards easier. Since then, everything has been much harder."

Officially, before the Platts legislation can be moved, the Bureau of Citizenship and Immigration Services, formerly known as the Immigration and Naturalization Service, must conduct extensive background checks to make sure the men have not committed any criminal acts since being released.

Calls to the Homeland Security Department about those checks were referred to the new immigration agency. Repeated calls to that agency's headquarters in Washington were not returned.

"I know in my heart that we're going to win this. It's just a matter of persevering in getting it through," Church said. "They've gone through hell and back. They don't deserve it."

She said the men should be allowed to stay here "because after 10 years of working hard, of showing us why they want to be here - not unlike my own grandfather when he came from Ireland - I think they've shown they have a reason to be here.

"They have left their families, they have left everything they ever knew - and still love - and they still prefer to be here to try and make a living and fend for their families and live free."

GRAPHIC.

The Golden Venture carried 282 refugees.

Ten died attempting to swim ashore.

About 45 were granted political asylum.

About 140 returned to China.

About 50 were sent to other countries, including Ecuador, Venezuela and Canada.

Thirty-eight who were released from jail in 1997 remain in America, pending determination of their immigration status.

**GRAPHIC:** Golden Venture (above) carrying 282 illegal immigrants is stuck on Rockaway sandbar in 1993. Ten died trying to swim ashore, with nearly all of the others (far l.) at the mercy of authorities. The disaster made the cover of the Daily News (l.) on June 7, 1993. Misha Eerwitt Charles Arrigo. **Michael Chen**, one of the refugees aboard Golden Venture in 1993, outside his Columbus, Ohio, restaurant, with his son Allen and wife Xiu Lan Lin. Terry Gilliam speial to the News

**LOAD-DATE:** June 2, 2003

Document 1 of 1

# **SMUGGLING ILLEGAL ALIENS IS A FEDERAL CRIME!**

Title 8. United States Code. Section 1324

If you encourage / induce an undocumented alien to come into, enter, or reside in the United States, which results in the death of any undocumented alien,

**YOU may be IMPRISONED FOR LIFE**  
**or face the DEATH PENALTY!**

If you Conceal, harbor, or shield from detection, or attempt to conceal, harbor, or shield from detection, any undocumented alien in any place, including any building or means of transportation, which causes serious bodily injury, you may be

**Imprisoned up to 20 YEARS**

If you knowingly bring in or attempt to bring an undocumented alien into the United States, in any manner whatsoever, at a place other than a designated port of entry or at a place other than as designated by the Commissioner of the Bureau of Customs and Border Protection, you may be

**Imprisoned up to 10 YEARS**

If you transport, move or attempt to transport or move any undocumented alien within the United States, you may be

**Imprisoned up to 5 YEARS**

**If you have any information on persons  
transporting or harboring illegal aliens in the  
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**Título 8, Código de los Estados Unidos, Sección 1324**

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DEPARTAMENTO DE SEGURIDAD INTERNA  
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